

## Conduct of Business Rulebook (COBS)

\*In this attachment underlining indicates new text and striking through indicates deleted text.

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## 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) 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;

~~(b) 2.1.4 This chapter does not apply to an Authorised ISPV; or~~

(c) an Authorised Person in so far as it carries on, or intends to carry on, the Regulated Activity of Providing Money Services.

### Guidance

1. 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 Financial Services Permission, provided the Regulated Activities or Specified Investments marketed by it are those offered by its head office, or a member of its Group.
2. 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.
3. 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.
4. An Authorised Person undertaking the Regulated Activity of Providing Money Services, as described in Chapter 8 of Schedule 1 of FSMR does not have a client relationship with a Person to whom it Provides Money Services, either as Payer or Payee, so the client classification requirements in this chapter do not apply to that Authorised Person.

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## 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~~14.4.3 (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*).

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## 14. CLIENT MONEY AND RELEVANT 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; or
- (c) holds or controls Relevant Money.

#### 14.1.2 [Deleted]

##### Guidance

- ~~1.(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 and Relevant Money where~~a~~ 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, or properly safeguard Relevant Money in the course of the delivery of Payment Services, in or from the Abu Dhabi Global Market.
- ~~2.(b)~~ An Authorised Person must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets and Relevant Money, or of rights in connection with Client Assets and Relevant Money, as a result of, for example, the Authorised Person's or a third party's insolvency, fraud, poor administration, inadequate recordkeeping or negligence.

3. For the purposes of interpretation of this Chapter by an Authorised Person engaging in Payment Services as part of undertaking the Regulated Activity of Providing Money Services, only those Rules which apply to Relevant Money shall be applicable. References which require the safekeeping of Relevant Money in a Client Account do not result in a Payment Service User becoming a Client of a Payment Service Provider.

#### **14.1.3 General Requirements**

- (a) An Authorised Person which holds or controls Client Money or Relevant Money must comply with the provisions of Rule 14.2 (the "Client Money Rules") in relation to that Client Money or Relevant Money, as applicable, and have systems and controls in place to be able to evidence compliance with the Client Money Rules.
- (b) An Authorised Person which also holds or controls Client Investments, Provides Custody or Arranges Custody must also comply with Chapter 15.
- (c) An Authorised Person must have systems and controls to ensure that Client Assets and Relevant Money 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 or Relevant Money**

Client Assets or Relevant Money 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**

- 1. 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.
- 2. 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 and Relevant 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 a Bank 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.

14.2.1A All Money held or controlled by a Payment Service Provider on behalf of a Payment Service User in the course of, or in connection with, the carrying on of Payment Services in or from the Abu Dhabi Global Market is Relevant Money from the time of its receipt, except Money which is due and payable to the Authorised Person from the Payment Service User.

14.2.2 [Deleted]

### Guidance

- 1.~~(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.
- 2.~~(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.
- 3.~~(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.

4. Chapter 19 also contains specific provisions relating to the handling of Relevant Money by an Authorised Person conducting Payment Services.

#### 14.2.3 Holding or Controlling Client Money or Relevant Money

- (a) An Authorised Person in Category 4, other than an Authorised Person engaged in the Regulated Activity of Operating a Private Financing Platform, must not hold Client Money.
- (b) An Authorised Person which holds or controls Client Money for a Client or Relevant Money for a Payment Service User must comply with these Client Money Rules, and also the specific provisions in Chapter 19 relating to Relevant Money, as applicable.
- (c) Where the Client is a Market Counterparty, an Authorised Person engaging in Investment Business 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 or Relevant Money into Client Accounts

- (a) Subject to the requirements in Chapter 19 in relation to Payment Services, wwhere an Authorised Person holds or controls Client Money or Relevant Money it must ensure, except where otherwise provided in these Rules, that the Client Money and Relevant Money is paid into one or more Client Accounts within one Business dDay 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 or Relevant Money within one Business dDay 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 or Payment Service Users, as applicable, provided that the Money is removed within twenty Business~~thirty D~~days; or
- (iv) it is to meet a shortfall in Client Money or Relevant Money.
- (c) Where an Authorised Person deposits any Money into a Client Account, such Money is Client Money or Relevant Money, as applicable, until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Rules or the requirements of Chapter 19 in the case of an Authorised Person conducting Payment Services.
- (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 or Relevant 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 or Relevant Money, as applicable, directly to a Client Account, or otherwise to enable the Authorised Person to identify the Client Money or Relevant Money, as applicable; 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 and Relevant 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, or as otherwise specified in Chapter 19 of these Rules. The procedures must cover Client Money or Relevant Money, as applicable, received by the Authorised Person through ~~the mail, electronically or via agents of the Authorised Person or through any other means.~~

**Guidance**

An Authorised Person holding or controlling Relevant Money in connection with the conduct of Payment Services is expected to identify, record and reconcile such amounts in accordance with the requirements of Chapter 19.

**14.2.5 Client Accounts**

- (a) A Client Account in relation to Client Money or Relevant Money, as applicable, 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 or Relevant Money, as applicable;
  - (iii) is maintained in the name of:
    - (A) if a Domestic Firm, the Authorised Person; or
    - (B) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Person; and
  - (iv) includes the words "Client Account" in its title.
- (b) An Authorised Person:
  - ~~(i) must~~ 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; and
  - (ii) conducting Payment Services must hold Relevant Money in a 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

1. An Authorised Person holds all Client Money or Relevant Money, as applicable in Client Accounts for its Clients as part of a common pool of money so those particular Clients or Payment Service Users, as applicable, do not have a claim against a specific sum in a specific account; they only have a pro rata claim to the Client Money or Relevant Money, as applicable, 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 or Relevant Money, as applicable, in a Client Account is to ensure that Money belonging to Clients or Payment Service Users, as applicable is segregated and readily identifiable from Money belonging to the Authorised Person, such that, following a Pooling Event, Clients or Payment Service Users, as applicable, will have a joint property interest in the Client Money or Relevant Money, as applicable, in proportion to each Client's or Payment Service Users' entitlement in the Statutory Trust.
2. 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).
3. 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.
4. A Primary Pooling Event triggers a notional pooling of all the Client Money related to each Statutory Trust. The obligation to distribute Client Money or Relevant Money, as applicable, 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 Business eDay 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 Business eDay 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 Person 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 or Relevant Money, as applicable, 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 ~~a~~ Agent and

concluded on reasonable grounds that the Third-Party Agent is suitable to hold ~~that~~ Client Money or Relevant Money, as applicable, 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 or Relevant Money, as applicable.
- (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 or Relevant Money, as applicable, 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 or Relevant Money to a Third-Party Agent**

- (a) Subject to ~~Rule 14.2.8(d)~~, 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~~ twenty Business 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).
- (d) If the Third-Party Agent does not provide the acknowledgement referred to in ~~Rule 14.2.8(c)~~ within a twenty Business Days ~~30-day~~ period, the Authorised Person must refrain from making further deposits of Client Money or Relevant Money, as applicable, with that Third-Party Agent and withdraw any Client Money or Relevant Money, as applicable, standing to the credit of that Client Account.

#### Guidance

The Regulator would consider twenty Business Days ~~30~~ as being a reasonable period for an Authorised Person to receive a written acknowledgement from the Third-Party Agent.

#### 14.2.9 Payment of Client Money or Relevant 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) Client Money paid out by way of cheque or other payable order under ~~Rule 14.2.9(e)~~ 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

1. 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.
2. 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 conducting Investment Business 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 one calendar month of the statement date.

#### **Guidance**

Authorised Persons conducting Payment Services must report to Payment Service Users in accordance with Chapter 19.

#### 14.2.12 Reconciliation

- (a) An Authorised Person conducting Investment Business must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out as regularly as necessary but at least every calendar month.
- (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 Business 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 Business 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 14.2.12~~ (g) 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 engaged in Investment Business 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 section 4 of FSMR, an Authorised Person acts as trustee for all Client Money or Relevant Money, as applicable, received or held by it for the benefit of the Clients or Payment Service Users, as applicable for whom that Client Money or Relevant 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 or Remote 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 or Remote 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 or Remote 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 or Remote 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 or Remote 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 or Relevant Money, as applicable, 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 or Relevant Money, as applicable, subject to (ii), for the Clients or Payment Service Users 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 or Relevant Money, as applicable, 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) In respect of Authorised Persons conducting Investment Business, the beneficiaries of each separate Statutory Trust are those Clients:
- (i) ~~to~~ ~~from~~ whom the Authorised Person has ~~delivered~~ ~~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 or Remote 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 Person which is subject to the Client Money Rules receives and holds Client Money or Relevant Money, as applicable 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 or Relevant Money, as applicable, 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 or Relevant Money, as applicable, 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 Person'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 ~~an~~ 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 dDay of the items in Rule 14.3.4 below; 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 dDay 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 and Relevant 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~~ section applies to an Authorised Person that holds Client Money or Relevant Money, as applicable, which is subject to the Client Money Rules when a Pooling Event occurs.

## Guidance

1. This ~~section~~ ~~chapter~~ seeks to facilitate the timely return of Client Money to a Client or Relevant Money to Payment Service Users, as applicable, in the event of the Failure of an Authorised Person or third party at which the Authorised Person holds Client Money or Relevant Money, as applicable.
2. 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.
3. Relevant Money held by an Authorised Person conducting Payment Services is intended to be treated in the same manner as Client Money pursuant to the Client Money Distribution Rules, in terms of its segregation for the purposes of distribution to Payment Service Users following a Primary Pooling Event or a Secondary Pooling Event. Distribution of Relevant Money subject to a Statutory Trust is intended to occur either in accordance with the balances in the respective Payment Accounts of Payment Service Users, or alternatively to be used for the purpose of redemption of Stored Value held by Payment Service Users.

### 14.4.2 Primary Pooling Events

- (a) If the Authorised Person becomes insolvent, and there is (for whatever reason) a shortfall in Client Money or Relevant Money, as applicable 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 section 38 of FSMR;
  - (iii) if the Regulator makes an order or decision to this effect under FSMR; or
  - (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

A Primary Pooling Event triggers a notional pooling of all the Client Money or Relevant Money, as applicable, in every type of Client ~~Money~~ Account, and the obligation to distribute it.

### 14.4.3 Pooling and distribution of Client Money

- (a) If a Primary Pooling Event occurs, an Authorised Person must comply with (b) to ~~(g)~~ 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, a Remote 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 Remote 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 ~~14.3.4.3~~ 14.4.3(i) relating to each Client's Client Equity Balance; or

- (ii) (where applicable) transfer Client Money held at a Recognised Clearing House, Remote 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 from a Recognised Clearing House, a Remote 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 ~~14.2.13~~14.2.15 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 or Remote Clearing House has acted in accordance with its Default Rules.
- (g) ~~[Deleted] 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 or Remote Clearing House defaults, the Recognised Clearing House or Remote 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 Remote 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 or Remote 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 Remote 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 Remote 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) ~~[Deleted] For the avoidance of doubt, in respect of a Clearing Member Client Contract, any Client Money remitted by the Recognised Clearing House or Remote 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) ~~[Deleted] 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 or Remote Clearing House as part of the default management process of that Recognised Clearing House or Remote 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 or Remote Clearing House directly to that Client, where the amount comprises the balance owed by the Recognised Clearing House or Remote Clearing House after the completion of the Clearing Member's default management process by the Recognised Clearing House or Remote 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.

**Guidance**

1. 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.
2. For the avoidance of doubt, in respect of a Clearing Member Client Contract, any Client Money remitted by the Recognised Clearing House or Remote Clearing House (or in the case of the Authorised Person being an indirect Client, a Clearing Member) to the Authorised Person pursuant to (e) should not be treated as Client Money received after the Failure of the Authorised Person under Rule 14.4.4.
3. 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.

**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) ~~[Deleted] 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 ~~B~~Business ~~d~~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.

#### **Guidance**

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.

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

- (a) A Secondary Pooling Event occurs on Failure of a third party to which Client Money or Relevant Money, as applicable, 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 Payment Service Users, or paid into a Client Account at an unaffected bank, an amount equivalent to the shortfall in the amount of Client Money or Relevant Money, as applicable, 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, or Payment Service Users and Relevant Money, as applicable, held with third parties under Rules 14.2.18, 14.3.6, and 14.3.7.

#### **Guidance**

1. These ~~R~~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.

2. 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 or Relevant 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, or Payment Service Users, as applicable, of that relevant pool, rateably in accordance with their entitlements;
  - (ii) a new Client Money or Relevant Money entitlement, as applicable, must be calculated for each Client or Payment Service User, as applicable, 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 or Relevant Money entitlement;
  - (iii) the Authorised Person must make and retain a record of each Client's or Payment Service User's share of the ~~Client Money~~ shortfall of Client Money or Relevant Money, as applicable, at the Failed third party until the Client or Payment Service User, as applicable, is repaid; and
  - (iv) the Authorised Person must use the new Client Money or Relevant 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 or Relevant Money, as applicable, 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, is not pooled with any Client Money of other affected Statutory Trusts.
- (g) ~~[Deleted] is not pooled with any Client Money of other affected Statutory Trusts.~~
- (h) Any shortfall in Client Money or Relevant Money held under a particular Statutory Trust affected by a Secondary Pooling Event must be borne by all the Clients or Payment Service Users whose Client Money or Relevant Money, as applicable, is held in such a Statutory Trust, rateably in accordance with their Client Money or Relevant Money entitlements.
- (i) A new Client Money or Relevant Money entitlement, as applicable, must be accordingly and the Authorised Person's records must be amended to reflect each Client's or Payment Service User's new Client Money or Relevant Money entitlement, as applicable.
- (j) the Authorised Person must make and retain a record of each Client's or Payment Service User's share of the Client Money or Relevant Money shortfall at the Failed third party until the Client or Payment Service User is repaid; and
- (k) the Authorised Person must use the new Client Money or Relevant Money entitlements, calculated in accordance with (h), 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 or Relevant Money received after the Failure of a third party**

- (a) Client Money or Relevant 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, if Client Money,~~ 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, if Client Money, 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;

(iii) must, if Relevant Money, be placed in a separate Client Account maintained with a third party other than the one which has Failed.

- (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~~ 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 or Relevant 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 or Relevant 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.

15.1.3 This chapter does not apply to Authorised Persons who provide Payment Services, who are subject to Chapter 19.

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#### **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 section~~in this appendix~~.

## 16. RECOVERY AND RESOLUTION PLANNING FOR CLIENT MONEY, RELEVANT 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, Relevant Money and Safe Custody Assets (Chapters 14 and 15) held by the Authorised Person to Clients or Payment Service Users, as applicable.

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 or Relevant Money in accordance with Chapter ~~15~~14.

### 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 (the "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.~~[Deleted]

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).~~[Deleted]

#### Guidance

1. 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 or revising these documents.

2. 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 ~~forty-eight~~<sup>48</sup> 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 ~~must~~<sup>should</sup> 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 ~~must~~<sup>should</sup> 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. [Deleted]~~

~~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. [Deleted]~~

### **Guidance**

1. Contravention of either Rule 16.2.8 or 16.2.9 may be relied upon as tending to establish contravention of Rule 16.2.6.
2. 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). [Deleted]~~

### **Guidance**

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(c); 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, Relevant 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, Relevant 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, Relevant Money ~~or~~ Safe Custody Assets that it holds.

#### 16.3.2 [Deleted]

##### **Guidance**

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, Relevant Money and Safe Custody asset reconciliations; and
- (b) those in charge of client documentation for business involving Client Money, Relevant 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 of an Authorised Person conducting Investment Business:

- (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) Rule 15.4.5(b) ~~and 15.4.5(c)~~ (*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.

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## **19. PAYMENT SERVICES**

### **19.1 Application**

#### **19.1.1 Chapter 19 of these Rules applies to Payment Service Providers.**

##### **Guidance**

- 1. Payment Service Providers are distinct from other Authorised Persons undertaking the Regulated Activity of Providing Money Services as they offer to their customers one or more of Payment Accounts, Payment Instruments and Stored Value.**
- 2. Payment Service Users are not considered to be Clients of Payment Service Providers insofar as Chapter 19 does not distinguish between Retail Clients and Professional Clients in relation to the conduct of Payment Services so Chapter 2 does not therefore apply to Payment Services Providers.**
- 3. Chapters 14 and 16 are applicable to the safekeeping of Relevant Money by Payment Service Providers, being either Money retained in the Payment Account of the Payment Service User, or Money held in a segregated manner by the Payment Service Provider for the purpose of funding the redemption of Stored Value issued to the Payment Service User in connection with the conduct of Payment Services.**
- 4. Other Authorised Persons undertaking the Regulated Activity of Providing Money Services that offer only one or more of currency exchange and Money Remittance to their customers, but not Payment Services, and are considered not to hold Client Money or Relevant Money.**

### **19.2 Framework Contracts**

##### **Guidance**

**Framework Contracts are contracts between Payment Service Providers and Payment Service Users enabling future execution of individual and successive Payment Transactions, using the payment service platform offered by the Payment Service Provider. Such contracts are often used to establish Payment Accounts or the terms upon which Stored Value will be issued and redeemed, and typically govern the operation of the payment service, including the rights and obligations of Payment Service Providers and their respective Payment Service Users.**

##### **General information to be included in Framework Contracts**

**19.2.1 Unless otherwise agreed in writing by a Payment Service Provider and a Payment Service User which is not a Natural Person in accordance with Rule 19.6.1, a Framework Contract between a Payment Service Provider and a Payment Service User must include the following information:**

- (a) about the Payment Service Provider:**
  - (i) the name of the Payment Service Provider;**
  - (ii) the address and contact details of the Payment Service Provider's office in ADGM;**

(iii) the name of the Regulator of the Payment Service Provider, and details of the Payment Service Provider's Financial Service Permission;

(b) about the Payment Service:

(i) a description of the main characteristics of the Payment Service to be provided;

(ii) the information or unique identifier that must be provided by the Payment Service User in order for a Payment Order to be properly initiated and executed;

(iii) the form and procedure for giving consent to the initiation of a Payment Order or execution of a Payment Transaction and for the withdrawal of consent in accordance with Rule 19.10.1(3);

(iv) the time of receipt of a Payment Order, in accordance with Rule 19.14.1, and the cut-off time for the processing of a Payment Order, if any, established by the Payment Service Provider;

(v) the maximum execution time for the Payment Services to be provided; and

(vi) any spending limits for the use of a Payment Instrument as agreed in accordance with Rule 19.10.2(1);

(c) about charges and exchange rates:

(i) details of all charges payable by the Payment Service User to the Payment Service Provider, including those connected to information which is provided or made available and, where applicable, a breakdown of the amounts of all charges;

(ii) where relevant, details of the exchange rates to be applied or, if Reference Exchange Rates are to be used, the method of calculating the relevant date for determining such Reference Exchange Rates;

(iii) where relevant and if agreed, the application of changes in Reference Exchange Rates and information requirements relating to any such changes, in accordance with Rule 19.2.5;

(d) about communication:

(i) the means of communication agreed between the parties for the transmission of information or notifications including, where relevant, any technical requirements for the Payment Service User's equipment and software for receipt of the information or notifications;

(ii) the manner in which and frequency with which information under Chapter 19 is to be provided or made available;

- (iii) the Payment Service User's right to receive the revised terms of the Framework Contract and any other information in accordance with Rule 19.2.4;
- (e) about safeguards and corrective measures:
  - (i) where relevant, a description of the steps that the Payment Service User must take in order to keep safe a Payment Instrument and how to notify the Payment Service Provider of loss of the Payment Instrument for the purposes of Rule 19.11.1(3);
  - (ii) how and within what period of time the Payment Service User must notify the Payment Service Provider of any unauthorised or incorrectly initiated or executed Payment Transaction under Rule 19.17.1;
  - (iii) the secure procedure by which the Payment Service Provider will contact the Payment Service User in the event of suspected or actual fraud or security threats;
  - (iv) where relevant, the conditions under which the Payment Service Provider proposes to reserve the right to stop or prevent the use of a Payment Instrument in accordance with Rule 19.14.2;
  - (v) the Payer's liability under Rule 19.20.1 including details of any limits on such liability;
  - (vi) the Payment Service Provider's liability for unauthorised Payment Transactions under Rule 19.20.1;
  - (vii) the Payment Service Provider's liability for the initiation or execution of Payment Transactions under Rule 19.21.2 or Rule 19.21.3; and
  - (viii) the conditions for the payment of any refund to the Payment Service User under this Chapter.
- (f) about changes to and termination of the Framework Contract:
  - (i) where relevant, the proposed terms under which the Payment Service User will be deemed to have accepted changes to the Framework Contract in accordance with Rule 19.2.5, unless they notify the Payment Service Provider that they do not accept such changes before the proposed date of their entry into force;
  - (ii) the duration of the Framework Contract;
  - (iii) where relevant, the right of the Payment Service User to terminate the Framework Contract and any agreements relating to termination in accordance with Rule 19.2.8.
- (g) about redress:

- (i) any contractual clauses on the law applicable to the Framework Contract and the competent courts; and
  - (ii) the availability of any alternative dispute resolution procedures, if applicable, for the Payment Service User and the methods for having access to them.
- (h) if the Payment Service involves the issuance of Stored Value, about the redemption of Stored Value, including the conditions of redemption and any related fees.

19.2.2 A Payment Service Provider must provide to a Payment Service User the information specified in Rule 19.2.1 before the Payment Service User is bound by the Framework Contract.

#### **Information provision during period of the Framework Contract**

19.2.3 If the Payment Service User so requests at any time during the term of the Framework Contract, the Payment Service Provider must provide the information specified in Rule 19.2.1 as well as any other terms of the Framework Contract.

#### **Changes in contractual information**

19.2.4 Subject to Rule 19.2.7, any proposed changes to:

- (a) the existing terms of the Framework Contract; or
- (b) the information specified in Rule 19.2.1,

must be provided by the Payment Service Provider to the Payment Service User no later than two months before the date on which they are to take effect.

19.2.5 Where the Framework Contract allows for any proposed changes to be made unilaterally by the Payment Service Provider in the event that the Payment Service User does not, before the proposed date of entry into force of the changes, notify the Payment Service Provider to the contrary, the Payment Service Provider must inform the Payment Service User that:

- (a) the Payment Service User will be deemed to have accepted the changes communicated to it under Rule 19.2.4; and
- (b) the Payment Service User has the right to terminate the Framework Contract without charge at any time before the proposed date of their entry into force.

19.2.6 Changes in exchange rates may be applied immediately and without notice where:

- (a) such a right is agreed under the Framework Contract and any such changes in exchange rates are based on the Reference Exchange Rate information which has been provided to the Payment Service User in accordance with Rule 19.2.1; or
- (b) the changes are more favourable to the Payment Service User.

19.2.7 Any change in the exchange rate used in Payment Transactions must be implemented and calculated in a neutral manner that does not discriminate collectively against Payment Service Users.

### **Termination of a Framework Contract**

19.2.8 The Payment Service User may terminate the Framework Contract at any time unless the parties have agreed on a period of notice not exceeding one month.

19.2.9 Any charges for the termination of the Framework Contract must not exceed the actual costs to the Payment Service Provider of termination.

19.2.10 The Payment Service Provider may not charge the Payment Service User for the termination of a Framework Contract after the Framework Contract has been in force for six months.

19.2.11 The Payment Service Provider may terminate a Framework Contract concluded for an indefinite period by giving at least two months' notice, if the Framework Contract so provides.

### **Information prior to execution of individual Payment Transaction under a Framework Contract**

19.2.12 Where an individual Payment Transaction under a Framework Contract is initiated by the Payer, at the Payer's request the Payer's Payment Service Provider must provide the Payer with a breakdown of all charges payable by the Payer in respect of the Payment Transaction.

### **Information for the Payer on individual Payment Transactions under a Framework Contract**

19.2.13 The Payer's Payment Service Provider under a Framework Contract must provide to the Payer the following information in respect of each Payment Transaction at least once per month free of charge:

- (a) a reference enabling the Payer to identify the Payment Transaction and, where appropriate, information relating to the Payee;
- (b) the amount of the Payment Transaction in the currency in which the Payer's Payment Account is debited or in the currency used for the Payment Order;
- (c) the amount of any charges for the Payment Transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the Payer;
- (d) where applicable, the exchange rate used in the Payment Transaction by the Payer's Payment Service Provider and the amount of the Payment Transaction after that currency conversion; and
- (e) the Debit Value Date or the date of receipt of the Payment Order.

### **Information for the Payee on individual Payment Transactions under a Framework Contract**

19.2.14 The Payee's Payment Service Provider under a Framework Contract must provide to the Payee the following information in respect of each Payment Transaction at least once per month free of charge:

- (a) a reference enabling the Payee to identify the Payment Transaction and the Payer, and any information transferred with the Payment Transaction;



- (b) the amount of the Payment Transaction in the currency in which the Payee's Payment Account is credited;
- (c) the amount of any charges for the Payment Transaction and, where applicable, a breakdown of the amounts of such charges;
- (d) where applicable, the exchange rate used in the Payment Transaction by the Payee's Payment Service Provider, and the amount of the Payment Transaction before that currency conversion; and
- (e) the Credit Value Date.

**Charges for information under a Framework Contract**

19.2.15A Payment Service Provider may not charge for providing or making available information which is required to be provided or made available under the provisions of Section 19.2.

19.2.16 The Payment Service Provider and the Payment Service User may agree on charges for any information which is provided at the request of the Payment Service User where such information is:

- (a) additional to the information required to be provided or made available by Section 19.2;
- (b) provided more frequently than is specified in Section 19.2; or
- (c) transmitted by means of communication other than those specified in the Framework Contract.

19.2.17 Any charges imposed under Rule 19.2.16 must not exceed the Payment Service Provider's actual costs of providing such information.

**Common provisions: communication of information**

19.2.18 Any information provided or made available by a Payment Service Provider in accordance with Section 19.2 must be provided or made available in English, using easily understandable language, and in a clear and comprehensible form.

**19.3 Low-Value Payment Instruments governed by a Framework Contract**

19.3.1 In respect of Low-Value Payment Instruments governed by a Framework Contract:

- (a) Section 19.2 compelling disclosure under the terms of a Framework Contract of general information concerning the Payment Service Provider and the relevant Payment Service does not apply and the Payment Service Provider is only required to provide the Payer with information about the main characteristics of the Payment Service, including but not limited to:
  - (i) the way in which the Payment Instrument can be used;
  - (ii) the liability of the Payer, as set out in Rule 19.20.1;

- (iii) charges levied;
  - (iv) any other material information the Payer might need to make an informed decision; and
  - (v) an indication of where the general information concerning the Framework Contract specified in Rule 19.2.1 is made available in an easily accessible manner;
- (b) the parties may agree that information to be provided to a Payer or Payee concerning individual Payment Transactions as specified in Rules 19.2.13 and 19.2.14 do not apply and instead:
- (i) the Payment Service Provider must provide or make available a reference enabling the Payment Service User to identify the Payment Transaction, the amount of the Payment Transaction and any charges payable in respect of the Payment Transaction;
  - (ii) in the case of several Payment Transactions of the same kind made to the same Payee, the Payment Service Provider must provide or make available to the Payment Service User information about the total amount of the Payment Transactions and any charges for those Payment Transactions; or
  - (iii) where the Payment Instrument is used anonymously or the Payment Service Provider is not otherwise technically able to provide or make available the information specified in (i) or (ii), the Payment Service Provider must enable the Payer to verify the amount of Money stored.

### **Guidance**

Low-Value Payment Instruments referred to under Rule 19.3.1 encompass those used in relation to both Payment Accounts and Stored Value.

## **19.4 Single Payment Service Contracts**

### **Guidance**

A Single Payment Service Contract is a contract between a Payment Service Provider and a user of the Payment Service Provider's platform formed at the time of usage of the platform, which governs a single transaction and are thus not governed by a Framework Contract and no Payment Account has been established.

### **Information required prior to the conclusion of a Single Payment Service Contract**

19.4.1 A Payment Service Provider must provide or make available to a Payment Service User the following information in relation to the Payment Service, whether by supplying a copy of the draft Single Payment Service Contract or a copy of the draft Payment Order or otherwise, before the Payment Service User is bound by the Single Payment Service Contract:

- (a) the information or unique identifier that has to be provided by the Payment Service User in order for a Payment Order to be properly initiated or executed;

- (b) the maximum time in which the Payment Service will be executed;
- (c) the charges payable by the Payment Service User to the its Payment Service Provider and, where applicable, a breakdown of such charges;
- (d) where applicable, the actual or Reference Exchange Rate to be applied to the Payment Transaction; and
- (e) such of the information specified in Rule 19.2.1 as is relevant to the Single Payment Service Contract in question.

## **19.5 Information required after the initiation of a Payment Order**

### **Guidance**

This information is required whether a Payment Order is initiated under a Framework Contract or a Single Payment Service Contract, or through a Payment Initiation Service Provider, whether it is a Low Value Payment Instrument or not.

19.5.1 Subject to Rule 19.5.3, a Payment Service Provider must provide or make available to the Payer and, where applicable, to the Payee, immediately after the initiation of a Payment Order:

- (a) confirmation of the successful initiation of the Payment Order with the Payer's Payment Service Provider;
- (b) a reference enabling the Payer and the Payee to identify the Payment Transaction, including the Payer and Payee, and, where appropriate, any information transferred with the Payment Order;
- (c) the amount of the Payment Transaction, in the currency used in the Payment Order;
- (d) the amount of any charges payable in relation to the Payment Transaction and, where applicable, a breakdown of the amounts of such charges expressed in the currency of the Payment Order;
- (e) where an exchange rate is used in the Payment Transaction the actual rate used or a reference to it, and the amount of the Payment Transaction after that currency conversion;
- (f) the date on which the Payment Service Provider received the Payment Order; and
- (g) the Credit Value Date.

19.5.2 Where a Payment Order is initiated through a Payment Initiation Service Provider, the Payment Service Provider must obtain and disclose the reference for the Payment Transaction from the Payment Initiation Service Provider in order to fulfil its obligations under Rule 19.5.1, unless otherwise excluded by Rule 19.6.2.

### **Avoidance of duplication of information under a Framework Contract**

19.5.3 Where a Payment Order for an individual Payment Transaction is transmitted by way of a Payment Instrument issued under a Framework Contract, the Payment Service Provider in

respect of that single Payment Transaction need not provide or make available under Rule 19.5.1 the general information which has been provided or will be provided under Section 19.2 by another Payment Service Provider in respect of a Framework Contract.

## **19.6 Disapplication of requirements for non-Natural Persons**

19.6.1 Where the Payment Service User is not a Natural Person, the Payment Service User and the Payment Service Provider may agree in writing the following Rules do not apply:

- (a) Rules 19.2.16 and 19.2.17 (charges for information);
- (b) Rule 19.10.1 (3) and (4) (withdrawal of consent);
- (c) Rule 19.18.1 (evidence on authentication and execution);
- (d) Rule 19.20.1 (Payer or Payee's liability for unauthorised transactions);
- (e) Rules 19.17.1 and 19.17.2 (requests for refund);
- (f) Rule 19.14.3 (revocation of a Payment Order);
- (g) Rule 19.21.2 (defective execution of Payer-initiated transactions);
- (h) Rule 19.21.3 (defective execution of Payee-initiated transactions);
- (i) Rule 19.21.5 (liability for charges); and

the parties may agree that a different time period applies concerning unauthorised or incorrectly executed Payment Transactions for the purposes of Rule 19.17.1.

## **Disapplication of certain Rules in the case of Low Value Payment Instruments**

19.6.2 (1) The parties may agree that the following Rules do not apply where a Low Value Payment Instrument does not allow for the stopping or prevention of its use:

- (a) Rule 19.11.1 (3) (notification of loss of Payment Instrument); and
- (b) Rule 19.20.1(4) (Payer not liable for certain losses).

(2) Where a Low Value Payment Instrument is used anonymously or the Payment Service Provider is not in a position, for other reasons concerning the Low Value Payment Instrument, to prove that a Payment Transaction was authorised, the following Rules do not apply:

- (a) Rule 19.18.1 (Evidence on authentication and execution of Payment Transactions);
- (b) Rule 19.19.1 (Payment Service Provider's liability for unauthorised Payment Transactions); and
- (c) Rule 19.20.1 (Payer's or Payee's liability for unauthorised Payment Transactions).

(3) In the case of a Payment Order relating to a Low Value Payment Instrument:

- (a) a Payment Service Provider is not required to notify the Payment Service User of the refusal of a Payment Order relating to such Low Value Payment Instrument and the reasons for such refusal in accordance with Rule 19.14.2(1) if the non-execution is apparent from the context;
- (b) the Payer may not revoke the Payment Order under Rule 19.14.3 after transmitting the Payment Order or giving its consent to execute the Payment Transaction to the Payee;
- (c) execution periods other than those provided by Rule 19.15.2 may apply.

## **19.7 Safeguarding requirements**

19.7.1 A Payment Service Provider is prohibited from accepting physical cash in the form of banknotes and coins from any Payment Service User and distributing physical cash in the form of banknotes and coins to any Payment Service User and must safeguard Relevant Money placed in one or more Payment Accounts, as necessary.

### **Guidance**

A Payment Service Provider must safeguard Money which they may be responsible for the transmission of, as well as any Money which they may hold or control on behalf of a Payment Service User, or which may be required to fund the redemption of Stored Value issued to a Payment Service User.

19.7.2 A Payment Account in which Relevant Money is held, must:

- (a) be designated in such a way as to demonstrate that it is an account which is held for the purpose of safeguarding Relevant Money in accordance with Chapter 14 of these Rules;
- (b) be used only in relation to Payment Transactions; and
- (c) be used only for holding Relevant Money.

19.7.3 No person other than the Payment Service Provider may have any interest in or right over the Relevant Money placed in a Payment Account in accordance with Rule 19.7.2, except as provided by these Rules.

19.7.4 The Payment Service Provider must keep records of all Relevant Money segregated in accordance with Rule 19.7.2.

19.7.5 A Payment Service Provider must maintain organisational arrangements sufficient to minimise the risk of any loss of Relevant Money through fraud, misuse, negligence or poor administration.

## **19.8 Record keeping**

19.8.1 A Payment Service Provider must maintain relevant records of all Relevant Money received, including all records of agreements with Payment Service Users, and all Payment Transactions

and keep those records for a period of at least six years from the date on which the record was created.

## **19.9 Payment Accounts and outsourcing of operational functions**

19.9.1 Where a Payment Service Provider relies on a third party for the performance of operational functions it must take all reasonable steps to ensure that these Rules are complied with.

### **Guidance**

GEN 3.3.31 and 3.3.32 and PRU 6.8 also govern outsourcing of functions and activities by an Authorised Person. A Payment Service Provider is required to comply with those Rules.

## **19.10 Authorisation of Payment Transactions**

### **Consent and withdrawal of consent**

19.10.1(1) A Payment Transaction is to be regarded as having been authorised by the Payer for the purposes of this Rule only if the Payer has given its consent to:

- (a) the execution of the Payment Transaction; or
- (b) the execution of a series of Payment Transactions of which that Payment Transaction forms part.

(2) Such consent:

- (a) may be given before or, if agreed between the Payer and its Payment Service Provider, after the execution of the Payment Transaction;
- (b) must be given in the form, and in accordance with the procedure, agreed between the Payer and its Payment Service Provider; and
- (c) may be given via the Payee or a Payment Initiation Service Provider.

(3) The Payer may withdraw its consent to an individual Payment Transaction at any time before the point at which the Payment Order can no longer be revoked under Rule 19.14.3.

(4) Subject to Rule 19.14.3(2) and (3) concerning time limits, the Payer may withdraw consent to the execution of a series of Payment Transactions at any time with the effect that any future Payment Transactions previously consented to are not regarded as authorised for the purposes of this Chapter.

### **Limits on the use of Payment Instruments and access to Payment Accounts**

19.10.2(1) Where a specific Payment Instrument is used for the purpose of giving consent to the execution of a Payment Transaction, the Payer and its Payment Service Provider may agree on spending limits for any Payment Transactions executed through that Payment Instrument.

- (2) A Framework Contract may provide for the Payment Service Provider to have the right to stop the use of a Payment Instrument on reasonable grounds relating to the security of the Payment Instrument or the suspected unauthorised or fraudulent use of the Payment Instrument.
- (3) The Payment Service Provider must inform the Payer that it intends to stop the use of the Payment Instrument and provide its reasons for doing so, in the manner agreed between the Payment Service Provider and the Payer, before carrying out any measures to stop the use of the Payment Instrument, or, if not possible, as soon as reasonably possible thereafter.
- (4) The Payment Service Provider must immediately report any incident arising under (2) to the Regulator in such form as the Regulator may direct, and such report must include the details of the case and the reasons for taking action.
- (5) The Payment Service Provider must restore access to the Payment Account once the reasons for denying access no longer justify such denial of access.

#### **19.11 Obligations of the Payment Service Provider in relation to Payment Instruments**

- 19.11.1(1) A Payment Service Provider issuing a Payment Instrument must ensure that the Personalised Security Credentials are not accessible to persons other than the Payment Service User to whom the Payment Instrument has been issued.
- (2) The Payment Service Provider bears the risk of sending to the Payment Service User a Payment Instrument or any Personalised Security Credentials relating to it.
- (3) The Payment Service Provider must ensure that appropriate means are available at all times to enable a Payment Service User to notify the Payment Service Provider of the loss, theft, misappropriation or unauthorised use of the Payment Instrument.

#### **19.12 Payment Transactions where the transaction amount is not known in advance**

- 19.12.1 Where a card-based Payment Transaction is initiated by or through the Payee and the amount of the transaction is not known when the Payer authorises the Payment Transaction:
  - (a) the Payer's Payment Service Provider may not block Money on the Payer's Payment Account unless the Payer has authorised the exact amount of the Money to be blocked; and
  - (b) the Payer's Payment Service Provider must release the blocked Money without undue delay after becoming aware of the amount of the Payment Transaction, and in any event immediately after receipt of the Payment Order.

#### **19.13 Requests for refunds of Money for Payment Transactions initiated by or through a Payee**

- 19.13.1(1) The Payer is entitled to a refund from its Payment Service Provider of the full amount of any authorised Payment Transaction initiated by or through the Payee if requested within eight weeks from the date on which the Money was debited, if:

- (a) the authorisation did not specify the exact amount of the Payment Transaction when the authorisation was given in accordance with Rule 19.10.1; and
  - (b) the amount of the Payment Transaction exceeded the amount that the Payer could reasonably have expected taking into account the pattern of the Payer's previous transactions, the conditions of the Framework Contract and the circumstances of the case.
- (2) The Payment Service Provider may require the Payer to provide such information as is reasonably necessary to prove that the conditions in (1) are satisfied.
- (3) When crediting a Payment Account under (1), a Payment Service Provider must ensure that the Credit Value Date is no later than the date on which the amount of the unauthorised payment transaction was debited.
- (4) The Payer and Payment Service Provider may agree in the Framework Contract that the right to a refund does not apply where:
  - (a) the Payer has given consent directly to the Payment Service Provider for the Payment Transaction to be executed; and
  - (b) if applicable, information on the Payment Transaction was provided or made available in an agreed manner to the Payer at least four weeks before the due date by the Payment Service Provider or by the Payee.

### **Guidance**

A Payment Service Provider is expected to engage in risk analysis when considering whether a transaction is legitimate. Consideration should be given to all relevant factors, identifying and investigating where any of the following characteristics are atypical of the previous pattern of transactions of the Payer:

- (i) whether this is the first instance of a Payment Transaction with the Payee;
- (ii) the location(s) of the Payer and the Payee, where these are identifiable, and whether they are in high-risk jurisdictions; and
- (iii) in the case of a Payment Account, the means of access to it and authentication of the transaction by the Payer.

19.13.2(1) Upon receipt of a request for a refund in accordance with Rule 19.13.1 the Payment Service Provider must either:

- (a) refund the full amount of the Payment Transaction; or
- (b) provide justification for refusing to refund the Payment Transaction, indicating the dispute settlement forum to which the Payer may refer the matter if the Payer does not accept the justification provided.



- (2) Any refund or justification for refusing a refund must be provided within ten Business Days of receiving a request for a refund or, where applicable, within ten Business Days of receiving any further information requested under Rule 19.13.1(2).
- (3) If the Payment Service Provider requires further information under Rule 19.13.1(2), it must not dismiss the request for a refund until it has received further information from the Payer.

## **19.14 Execution of Payment Transactions**

### **Receipt of Payment Orders**

- 19.14.1(1) A Payer's Payment Service Provider must not debit the Payment Account before receipt of a Payment Order.
- (2) If the time of receipt of a Payment Order specified in the Framework Contract or the Single Payment Service Contract does not fall on a Business Day, the Payment Order is deemed to have been received on the first Business Day thereafter.
- (3) The Payment Service Provider may set a cut-off time towards the end of a Business Day after which any Payment Order received will be deemed to have been received on the following Business Day.

### **Refusal of Payment Orders**

- 19.14.2 (1) Where a Payment Service Provider refuses to execute a Payment Order or to initiate a Payment Transaction, it must notify the Payment Service User at the earliest opportunity in the agreed manner of the refusal, and, if possible, the reasons for such refusal, including, if applicable, the procedure for rectifying any factual errors that led to the refusal.
- (2) For the purposes of Rules 19.21.2 and 19.21.3 a Payment Order of which execution has been refused is deemed not to have been received.

### **Revocation of a Payment Order**

- 19.14.3(1) Subject to (2) to (4), a Payment Service User may not revoke a Payment Order after it has been received by the Payer's Payment Service Provider.
- (2) In the case of a Payment Transaction initiated by a Payment Initiation Service Provider, or by or through the Payee, the Payer may not revoke the Payment Order after giving consent to the Payment Initiation Service Provider to initiate the Payment Transaction or giving consent to execute the Payment Transaction to the Payee.
- (3) In the case of a Direct Debit, the Payer may not revoke the Payment Order after the end of the Business Day preceding the day agreed for debiting the Money.
- (4) At any time after the time limits for revocation set out in Rules 19.14.3(1) to (3), the Payment Order may only be revoked if the revocation is:
  - (a) agreed between the Payment Service User and the relevant Payment Service Provider(s); and

- (b) in the case of a Payment Transaction initiated by or through the Payee, including in the case of a Direct Debit, also agreed with the Payee.

#### **Amounts transferred and amounts received**

19.14.4(1) Subject to (2), the Payment Service Providers of the Payer and Payee must ensure that the full amount of the Payment Transaction is transferred and that no charges are deducted from the amount transferred.

- (2) The Payee and its Payment Service Provider may agree for the relevant Payment Service Provider to deduct its charges from the amount transferred before crediting it to the Payee provided that the full amount of the Payment Transaction and the amount of the charges are clearly stated in the information provided to the Payee.

#### **19.15 Execution time and Credit Value Date**

19.15.1(1) Rule 19.15.2 applies where a Payment Transaction:

- (a) is in U.S. Dollars;
- (b) is executed wholly within the UAE in UAE Dirham; or
- (c) involves only one currency conversion between the UAE Dirham and U.S. Dollars, where the currency conversion is carried out in the UAE.
- (2) In respect of any Payment Transaction not described in (1), the Payment Service User may agree with the Payment Service Provider that Rule 19.15.2 does not apply.

#### **Payment Transactions to a Payment Account**

19.15.2(1) The Payer's Payment Service Provider must ensure that the amount of the Payment Transaction is credited to the Payee's Payment Service Provider's account no later than the end of the Business Day following the time of receipt of the Payment Order by the Payer's Payment Service Provider.

- (2) The Payee's Payment Service Provider must value date and credit the amount of the Payment Transaction to the Payee's Payment Account following its receipt of the Money.

- (3) The Payee's Payment Service Provider must transmit a Payment Order initiated by or through the Payee to the Payer's Payment Service Provider within the time limits agreed between the Payee and its Payment Service Provider, enabling settlement in respect of a Direct Debit to occur on the agreed due date.

#### **Money placed on a Payment Account**

19.15.3 Where a Payment Service User transfers Money to its Payment Account with a Payment Service Provider in the same currency as that Payment Account, the Payment Service Provider must:

- (a) if the user is a Natural Person, ensure that the amount is made available and value dated immediately after the receipt of the Money;

- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the next Business Day after the receipt of the Money.

**Value date and availability of Money**

19.15.4(1) The Credit Value Date for the Payee's Payment Account must be no later than the day on which the amount of the Payment Transaction is credited to the account of the Payee's Payment Service Provider.

(2) Where:

(a) the transaction does not involve a currency conversion;

(b) the transaction involves only a currency conversion between the UAE Dirham and U.S. Dollars; or

(c) the transaction involves only one Payment Service Provider;

the Payee's Payment Service Provider must ensure that the full amount of the Payment Transaction is at the Payee's disposal immediately after that amount has been credited to that Payment Service Provider's account.

(3) The Debit Value Date for the Payer's Payment Account must be no earlier than the time at which the amount of the Payment Transaction is debited from that Payment Account.

**Stored Value**

19.15.5(1) A Payment Service Provider which issues Stored Value must:

(a) on receipt of Money from a Payment Service User issue without delay Stored Value at par value; and

(b) at the request of the Payment Service User, redeem:

(i) at any time; and

(ii) at par value;

the monetary value of the Stored Value held.

(2) Redemption of Stored Value may be subject to a fee which is proportionate and commensurate with the costs actually incurred by the Payment Service Provider only where the fee is stated in the Framework Contract and:

(a) redemption is requested before the termination of the Framework Contract;

(b) the Framework Contract provides for a termination date and the Payment Service User has terminated the Framework Contract before that date; or

(c) redemption is requested more than twelve months after the date of termination of the Framework Contract.

- (3) Where before the termination of the Framework Contract a Payment Service User that is a Natural Person makes a request for redemption of Stored Value, the Payment Service User may request redemption of the monetary value of the Stored Value in whole or in part, and the Payment Service Provider must redeem the amount so requested, subject to any fee imposed in accordance with Rule 19.15.5(2).
- (4) Where a Payment Service User makes a request for redemption of Stored Value on, or up to one year after the date of the termination of the Framework Contract, the Payment Service Provider must redeem the total monetary value of the Stored Value held.
- (5) (3) and (4) shall not apply in the case of a Payment Service User which is not a Natural Person, and, in such a case, the redemption rights of that Payment Service User shall be subject to the Framework Contract between that Payment Service User and the Payment Service Provider.
- (6) A Payment Service Provider is not required to redeem the monetary value of Stored Value where the Payment Service User makes a request for redemption more than six years after the date of termination of the Framework Contract.
- (7) A Payment Service Provider which issues Stored Value must not award:
  - (a) interest in respect of the holding of Stored Value; or
  - (b) any other benefit, monetary or otherwise, related to the length of time during which an Payment Service User holds Stored Value.
- (8) For the purposes of this Rule, a Framework Contract between a Payment Service Provider and a Payment Service User terminates when the right to use Stored Value for the purpose of making Payment Transactions ceases.

## **19.16 Authentication**

- 19.16.1(1) A Payment Service Provider must employ Strong Customer Authentication where a Payment Service User:
  - (a) accesses its Payment Account online, whether directly or through an Account Information Service Provider;
  - (b) initiates an Electronic Remote Payment Transaction; or
  - (c) carries out any action through a remote means of communication which may permit a risk of payment fraud or other abuses.
- (2) Where a Payer initiates an Electronic Remote Payment Transaction directly or through a Payment Initiation Service Provider, the Payer's Payment Service Provider must apply Strong Customer Authentication that includes elements that dynamically link the transaction to a specific amount and a specific Payee.
- (3) A Payment Service Provider must maintain adequate security measures to protect the confidentiality and integrity of Payment Service Users' Personalised Security Credentials.

## **19.17 Notification and rectification of unauthorised or incorrectly executed Payment Transactions**

19.17.1 A Payment Service User is entitled to redress under this Chapter only if it notifies its Payment Service Provider without undue delay, and in any event no later than twelve months after the debit date, on becoming aware of any unauthorised or incorrectly executed Payment Transaction.

19.17.2 Where the Payment Service Provider has failed to provide or make available information concerning the Payment Transaction in accordance with Section 19.5, the Payment Service User is entitled to redress under the Rules in this Chapter notwithstanding that the Payment Service User has failed to notify the Payment Service Provider within the time period stated in Rule 19.17.1.

## **19.18 Evidence on authentication and execution of Payment Transactions**

19.18.1(1) Where a Payment Service User:

- (a) denies having authorised an executed Payment Transaction; or
- (b) claims that a Payment Transaction has not been correctly executed;

it is for the Payment Service Provider to prove that the Payment Transaction was authenticated, accurately recorded, entered in the Payment Service Provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the Payment Service Provider or any third party it relies upon for the performance of operational functions.

(2) Where a Payment Service User denies having authorised an executed Payment Transaction, the use of a Payment Instrument recorded by the Payment Service Provider, including a Payment Initiation Service Provider where appropriate, is not in itself necessarily sufficient to prove either that:

- (a) the Payment Transaction was authorised by the Payer; or
- (b) the Payer acted fraudulently or failed with intent or gross negligence to take all reasonable steps to keep safe Personalized Security Credentials relating to a Payment Instrument.

(3) If a Payment Service Provider, including a Payment Initiation Service Provider where appropriate, alleges that a Payer acted fraudulently or failed with intent or gross negligence to take all reasonable steps to keep safe Personalized Security Credentials relating to a Payment Instrument, the Payment Service Provider must provide supporting evidence to the Payer.

## Liability

### **19.19 Payment Service Provider's liability for unauthorised Payment Transactions**

- 19.19.1(1) Subject to Rules 19.17.1, 19.17.2 and 19.18.1, where an executed Payment Transaction was not authorised in accordance with Rule 19.10.1, the Payment Service Provider must:
- (a) refund the amount of the unauthorised Payment Transaction to the Payer; and
  - (b) where applicable, restore the debited Payment Account to the state it would have been in had the unauthorised Payment Transaction not taken place.
- (2) The Payment Service Provider must provide a refund under (1) as soon as practicable, and in any event no later than the end of the Business Day following the day on which it becomes aware of the unauthorised Payment Transaction.
- (3) The requirement to provide a refund in accordance with (2) does not apply where the Payment Service Provider has reasonable grounds to suspect fraudulent behaviour by the Payment Service User.
- (4) When crediting a Payment Account under (1), a Payment Service Provider must ensure that the Credit Value Date is no later than the date on which the amount of the unauthorised Payment Transaction was debited.
- (5) Where an unauthorised Payment Transaction was initiated through a Payment Initiation Service Provider, the account servicing Payment Service Provider must comply with (1).

### **19.20 Payer or Payee's liability for unauthorised Payment Transactions**

- 19.20.1(1) Subject to (2) and (3), a Payment Service Provider which is liable under Rule 19.19.1 may require that the Payer be liable up to a maximum of US\$50 for any losses incurred in respect of unauthorised Payment Transactions arising from the use of a lost or stolen Payment Instrument, or from the misappropriation of a Payment Instrument.
- (2) The liability in (1) does not apply if:
- (a) the loss, theft or misappropriation of the Payment Instrument was not detectable by the Payer prior to the unauthorised Payment Transaction; or
  - (b) the loss was caused by acts or omissions of an employee, agent or branch of a Payment Service Provider or of an entity which carried out activities on behalf of the Payment Service Provider.
- (3) The Payment Service Provider is not liable for any losses incurred by the Payer in respect of an unauthorised Payment Transaction where the Payer:
- (a) has acted fraudulently; or

- (b) has with intent or gross negligence failed to ensure that the Personalised Security Credentials are not accessible to persons other than the Payer to whom the Payment Instrument has been issued.
- (4) Subject to (1), except where the Payer has acted fraudulently, the Payer is not liable for any losses incurred in respect of an unauthorised Payment Transaction:
  - (a) arising after notification to the Payment Service Provider in the agreed manner on becoming aware of the loss, theft, misappropriation or unauthorised use of the Payment Instrument;
  - (b) where the Payment Service Provider has failed at any time to provide, in accordance with Rule 19.11.1(3), appropriate means for notification;
  - (c) where the Payer's Payment Service Provider has failed to apply Strong Customer Authentication; or
  - (d) where the Payment Instrument has been used in connection with an Electronic Remote Payment Transaction.
- (5) Where Rule 19.16.1 requires the application of Strong Customer Authentication, but the Payee or the Payee's Payment Service Provider does not use Strong Customer Authentication, the Payee or the Payee's Payment Service Provider, or both (on a joint and several basis, as the case may be), must compensate the Payer's Payment Service Provider for the losses incurred or sums paid as a result of complying with Rule 19.19.1.

## **19.21 Non-execution or defective or late execution of Payment Transactions**

### **Incorrect Unique Identifiers**

- 19.21.1(1) Where a Payment Order is executed using a Unique Identifier provided by the Payment Service User, the Payment Order is deemed to have been correctly executed by each Payment Service Provider involved in executing the Payment Order with respect to the Payee specified by the Unique Identifier.
- (2) Where the Unique Identifier provided by the Payment Service User is incorrect, the Payment Service Provider is not liable under Rule 19.21.2 or 19.21.3 for non-execution or defective execution of the Payment Transaction, but the Payment Service Provider:
  - (a) must make reasonable efforts to recover the Money involved in the Payment Transaction; and
  - (b) may, if agreed in the Framework Contract, charge the Payment Service User for any such recovery.
- (3) The Payee's Payment Service Provider must co-operate with the Payer's Payment Service Provider in its efforts to recover the Money, in particular by providing to the Payer's Payment Service Provider all relevant information for the collection of the Money.

- (4) If the Payer's Payment Service Provider is unable to recover the Money it must, on receipt of a written request, provide to the Payer all available relevant information in order for the Payer to claim repayment of the Money.

**Non-execution or defective or late execution of Payment Transactions initiated by the Payer**

19.21.2(1) This Rule applies where a Payment Order is initiated directly by the Payer.

- (2) The Payer's Payment Service Provider is liable to the Payer for the correct execution of the Payment Transaction unless it can prove to the Payer and, where relevant, to the Payee's Payment Service Provider, that the Payee's Payment Service Provider received the amount of the Payment Transaction in accordance with Rule 19.15.2(1) and (2).

- (3) Where the Payer's Payment Service Provider is liable under (2), it must without undue delay refund to the Payer the amount of the non-executed or defective Payment Transaction and, where applicable, restore the debited Payment Account to the state in which it would have been had the defective Payment Transaction not taken place.

- (4) The Credit Value Date for a credit under (3) must be no later than the date on which the amount was debited.

- (5) If the Payer's Payment Service Provider proves that the Payee's Payment Service Provider received the amount of the Payment Transaction in accordance with Rule 19.15.2, the Payee's Payment Service Provider is liable to the Payee for the correct execution of the Payment Transaction and must:

(a) immediately make available the amount of the Payment Transaction to the Payee; and

(b) where applicable, credit the corresponding amount to the Payee's Payment Account.

- (6) The Credit Value Date for a credit under (5)(b) must be no later than the date on which the amount would have been value dated if the Payment Transaction had been executed correctly.

- (7) Where a Payment Transaction is executed late, the Payee's Payment Service Provider must, on receipt of a request from the Payer's Payment Service provider on behalf of the Payer, ensure that the Credit Value Date for the Payee's Payment Account is no later than the date the amount would have been value dated if the Payment Transaction had been executed correctly.

- (8) Regardless of liability under this Rule, the Payer's Payment Service Provider must, on request by the Payer, immediately and without charge:

(a) make efforts to trace any non-executed or defectively executed Payment Transaction; and

(b) notify the Payer of the outcome.

**Non-execution or defective or late execution of Payment Transactions initiated by the Payee**



- 19.21.3 (1) This Rule applies where a Payment Order is initiated by the Payee.
- (2) The Payee's Payment Service Provider is liable to the Payee for the correct transmission of the Payment Order to the Payer's Payment Service Provider in accordance with Rule 19.15.2(4).
- (3) Where the Payee's Payment Service Provider is liable under (2), it must immediately re-transmit the Payment Order in question to the Payer's Payment Service Provider.
- (4) The Payee's Payment Service Provider must also ensure that the Payment Transaction is handled in accordance with Rule 19.15.4, such that the amount of the Payment Transaction:
- (a) is at the Payee's disposal immediately after it is credited to the Payee's Payment Service Provider's account; and
- (b) is value dated on the Payee's Payment Account no later than the date the amount would have been value dated if the Payment Transaction had been executed correctly.
- (5) The Payee's Payment Service Provider must, on request by the Payee and free of charge, make immediate efforts to trace the Payment Transaction and notify the Payee of the outcome.
- (6) Subject to (8), if the Payee's Payment Service Provider proves to the Payee and, where relevant, to the Payer's Payment Service Provider, that it is not liable under (2) in respect of a non-executed or defectively executed Payment Transaction, the Payer's Payment Service Provider is liable to the Payer and must, as appropriate and immediately:
- (a) refund to the Payer the amount of the Payment Transaction; and
- (b) restore the debited Payment Account to the state in which it would have been had the defective Payment Transaction not taken place.
- (7) The Credit Value Date for a credit under (6)(b) must be no later than the date on which the amount was debited.
- (8) If the Payer's Payment Service Provider proves that the Payee's Payment Service Provider has received the amount of the Payment Transaction, (6) does not apply and the Payee's Payment Service Provider must value date the amount on the Payee's Payment Account no later than the date the amount would have been value dated if the Payment Transaction had been executed correctly.

**Non-execution or defective execution of Payment Transactions initiated through a Payment Initiation Service Provider**

- 19.21.4 (1) Where a Payment Order is initiated by the Payer through a Payment Initiation Service Provider, the account servicing Payment Service Provider must refund to the Payer the amount of a non-executed or defective Payment Transaction and, where applicable, restore the debited Payment Account to the state in which it would have been had the defective Payment Transaction not taken place.

- (2) Where the Payment Initiation Service Provider suffers a technical breakdown or other deficiency linked to the non-execution, defective or late execution of the Payment Transaction, (1) does not prevent the account servicing Payment Service Provider from seeking compensation from the Payment Initiation Service Provider for the losses incurred or sums paid as a result of the refund to the Payer.

### **Liability of Payment Service Provider for charges and interest**

19.21.5A Payment Service Provider is liable to its Payment Service User for any charges for which the Payment Service User is responsible and any interest which the Payment Service User must pay as a consequence of the non-execution, defective or late execution of a Payment Transaction by the Payment Service Provider.

### **19.22 Dispute resolution**

19.22.1(1) A Payment Service Provider must put in place and utilise adequate and effective complaint resolution procedures for the settlement of complaints from Payment Service Users about the rights and obligations arising under this Chapter.

- (2) All complaints must be recorded, investigated and resolved within an adequate timeframe and at the latest fifteen Business Days after the day on which the Payment Service Provider received the complaint.

- (3) A Payment Service Provider must make available to the Payment Service User the details of the dispute resolution services able to deal with disputes concerning the rights and obligations arising under this Chapter in a clear, comprehensive and easily accessible form.

- (4) The information to be made available under (3) must be made available:

(a) on the website of the Payment Service Provider;

(b) at the main office and any branches of the Payment Service Provider; and

(c) in the general terms and conditions of the Framework Contract between the Payment Service Provider and the Payment Service User.

### **19.23 Risk mitigation and Reporting**

#### **Management of operational and security risks**

19.23.1(1) A Payment Service Provider must establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the Payment Services it provides.

- (2) As part of that framework, the Payment Service Provider must establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.

- (3) A comprehensive assessment of operational and security risks must be undertaken by the Payment Service Provider relating to the Payment Services it provides, at least

annually or more frequently if requested by the Regulator, and provided to the Regulator on request.

- (4) The assessment must address the adequacy of the mitigation measures and control mechanisms implemented in response to those risks in such form and manner, and contain such information, as the Regulator may direct.

#### **Guidance**

1. The FSRA may require a Payment Service Provider to engage technical experts to generate an audit report addressed to the FSRA, in order to provide independent assurance that the systems and controls employed by the Payment Service Provider comply with the requirements imposed by this Chapter.
2. Payment Service Providers are expected to provide a summary of the information required by Rule 19.23.1 as part of the periodic IRAP assessments undertaken in accordance with PRU 10.3.

#### **Incident reporting**

- 19.23.2(1) If a Payment Service Provider becomes aware of a major operational or security incident, the Payment Service Provider must, without undue delay, notify the Regulator.
- (2) A notification under (1) must be in such form and manner, and contain such information, as the Regulator may direct.
- (3) If the incident has or may have an impact on the financial interests of its Payment Service Users, the Payment Service Provider must, without undue delay, inform its Payment Service Users of the incident and of all measures that they can take to mitigate the adverse effects of the incident.

#### **Guidance**

1. Upon receipt of the notification referred to in 19.23.2(1), the Regulator may notify any other relevant authorities in the U.A.E.
2. If the Regulator receives notification of an incident from any relevant regulator in the U.A.E. or internationally, it may direct the Payment Service Provider to take appropriate measures to protect the immediate safety of their Payment Service Users and the financial system.