

**Appendix 1**

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



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# The DFSA Rulebook

General Module

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## **2. FINANCIAL SERVICES**

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### **2.2 Financial Services activities**

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

- (a) .....
- (x) Operating a Credit Rating Agency; and
- (y) Arranging Credit and Advising on Credit; and
- (z) Operating a Crowdfunding Platform.

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#### **Permitted Financial Services for Authorised Firms**

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

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

- (a) Managing Assets;
- (b) Advising on Financial Products;
- (c) Managing a Collective Investment Fund; or
- (d) Advising on Credit.

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

- (a) Warrants, Certificates, Units or Structured Products; or
- (b) Derivatives.

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## **2.5 Providing credit**

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### **Exclusions**

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

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## **2.9 Arranging deals in investments**

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### **Exclusions**

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

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## **2.22 Operating an alternative trading system**

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### **Exclusions**

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

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## 2.28 Arranging Credit and Advising on Credit

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### Exclusions

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

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## 2.29 Operating a Crowdfunding Platform

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

(a) Operates a Loan Crowdfunding Platform; or

(b) Operates an Investment Crowdfunding Platform.

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

(a) operates an electronic platform that facilitates the bringing together of potential lenders and borrowers; and

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

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

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

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

- (b) administers an Investment that results from operating the electronic platform.
- (5) If the Person referred to in (4) also provides a facility that assists an investor to sell an investment referred to in that paragraph, that activity is also included within Operating an Investment Crowdfunding Platform.
- (6) In this Rule:
  - (a) “administer a loan agreement” means:
    - (i) provide information or perform other duties under the loan agreement on behalf of the borrower or lender;
    - (ii) take steps to obtain the repayment of the loan; or
    - (iii) exercise rights or perform obligations under the loan agreement on behalf of the borrower or lender;
  - (b) “administer an Investment” means:
    - (i) provide information or perform other duties relating to the Investment on behalf of the Issuer or investor;
    - (ii) take steps to obtain the payment of any amount payable by the Issuer to an investor; or
    - (iii) exercise rights or perform obligations relating to the Investment on behalf of the Issuer or investor;
  - (c) “electronic platform” means a website or other form of electronic media.
- (7) A Person (A) administers a loan agreement or an Investment for the purposes of this Rule if A performs a function itself or through another Person who has been appointed by A, acts under an arrangement with A or acts at A’s direction.

### Guidance

1. Operating a Crowdfunding Platform under Rule 2.29.1 requires a Person not only to operate an electronic platform that brings together lenders and borrowers or investors and issuers, but also to administer a resulting loan agreement or Investment. The administration may be carried out by the platform operator itself or by another person acting under an arrangement with, or at the direction of, the platform operator.
2. The activity in Rule 2.29.1(2)(a) and (4)(a) only covers electronic systems such as online portals and does not include, for example, meetings to facilitate a loan.
3. A Crowdfunding Operator may in some cases also provide a facility that assists lenders or investors using the platform to transfer their rights and obligations under a

loan agreement to another lender or to sell their Investment to another investor. If a Crowdfunding Operator provides such a facility, that activity will also fall within the definition of Operating a Crowdfunding Platform (see Rule 2.29.1(3) and (5)).

4. Operating a Loan Crowdfunding Platform will apply to a number of types of crowdfunding services such as ‘peer to peer’ lending, ‘peer to business’ lending and ‘business to business’ lending. However, it should be noted that COB Rule 11.3.5 requires a borrower to be a Body Corporate.
5. Investment Crowdfunding differs from Loan Crowdfunding in that, instead of the platform facilitating a loan, it facilitates the issue of an investment to an investor. Under Rule 2.2.10F, the type of Investment that can be facilitated is restricted to Investments such as Shares, Debentures or Sukuk and facilitating other more complex Investments such as Derivatives or Structured Products is not permitted.
6. Other types of crowdfunding such as ‘reward crowdfunding’ (i.e. where a financial contribution is made in anticipation of a benefit in existing or future goods or services) and ‘donation crowdfunding’ (i.e. where contributions are made in support of a social cause) will not usually constitute an activity referred to in Rule 2.29.1 unless a loan or Investment is involved.
7. A Crowdfunding Operator will need an endorsement on its Licence to deal with Retail Clients if it carries on its activities with a borrower or lender or an Issuer or investor that is a Retail Client (see Rule 2.2.8). It will also need an endorsement on its Licence if it holds or controls Client Assets (see Rule 2.2.10A).
8. A Crowdfunding Operator must be a Body Corporate incorporated under the DIFC Companies Law (see Rule 2.2.10D).

### **Exclusions**

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

### **Guidance**

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

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

**Definition of Financial Product in the general prohibition against misconduct**

**2A.1.1** For the purposes of Article 41B of the Regulatory Law, a “Financial Product” means an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, ~~or~~ a Contract of Insurance or a Crowdfunding Loan Agreement.

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### **3. FINANCIAL PROMOTIONS**

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#### **3.3 Definition of a Financial Product**

**3.3.1** Pursuant to Article 41A(4) of the Regulatory Law, “financial product” in Article 41A(3)(b) of the Regulatory Law is hereby prescribed to mean an Investment, a Credit Facility, a Deposit, a Profit Sharing Investment Account, ~~or~~ a Contract of Insurance or a Crowdfunding Loan Agreement.

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## APP 1 DEPOSITS

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**A1.1.3** A sum is not a Deposit if it is received:

- (a) by a lawyer acting in his professional capacity;
- (b) by an accountant acting in his professional capacity;
- (c) by an Authorised Firm or an Authorised Market Institution authorised under its Licence to carry on any one or more of the following Financial Services:
  - (i) Dealing in Investments as Principal;
  - (ii) Dealing in Investments as Agent;
  - (iii) Arranging Deals in Investments;
  - (iv) Managing Assets;
  - (v) Operating a Collective Investment Fund;
  - (vi) Effecting Contracts of Insurance;
  - (vii) Carrying Out Contracts of Insurance;
  - (viii) Operating an Exchange;
  - (ix) Operating a Clearing House;
  - (x) Insurance Intermediation;
  - (xi) Insurance Management;
  - (xii) Managing a Profit Sharing Investment Account;
  - (xiii) Providing Trust Services; or
  - (xiv) Arranging Credit and Advising on Credit; or
  - (xv) Operating a Crowdfunding Platform.

in the course of or for the purpose of any such Financial Service disregarding any applicable exclusions in chapter 2; or

- (d) by a Person as consideration for the issue by him of a Debenture.

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## APP2 INVESTMENTS

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### A2.2 Definitions of specific securities

**A2.2.1** For the purposes of Rule A2.1.2:

#### Shares

- (a) a Share is a share or stock in the share capital of any Body Corporate or any unincorporated body but excluding a Unit;

#### Debentures

- (b) a Debenture is an instrument creating or acknowledging indebtedness, whether secured or not, but excludes:
- (i) an instrument creating or acknowledging indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
  - (ii) a cheque or other bill of exchange, a banker's draft or a letter of credit (but not a bill of exchange accepted by a banker);
  - (iii) a banknote, a statement showing a balance on a bank account, or a lease or other disposition of property; ~~and~~
  - (iv) a Contract of Insurance; and
  - (v) a Crowdfunding Loan Agreement;

#### Guidance

1. A Debenture may include a bond, debenture stock, loan stock or note. Certain Islamic products ("Sukuk") structured as a debt instrument can also fall within this definition.
2. If the interest or financial return component on a debt instrument is to be calculated by reference to fluctuations of an external factor such as an index, exchange rate or interest rate, that does not prevent such an instrument being characterised as a Debenture.

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