



The DFSA Rulebook

Authorised Market Institutions

(AMI)

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1 INTRODUCTION

1.1 Application

- 1.1.1**
- (1) Subject to (2), this module applies to every Person who carries on, or intends to carry on, either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.
 - (2) This module does not apply to a Recognised Body or a Person who intends to carry on a Financial Service as a Recognised Body.
- 1.1.2**
- (1) Chapter 6 also applies to a Person who is, or proposes to become, a Controller as specified in Rule 6.1.2.
 - (2) Chapter 11 also applies to an Authorised Market Institution's Money Laundering Reporting Officer.

Guidance

Interpretations

1. References to Articles in this module are references to Articles in the Regulatory Law 2004 unless stated otherwise.

The Regulatory Law 2004 and the Markets Law 2012

2. The Regulatory Law establishes a principle based framework for the licensing and supervision of Authorised Market Institutions and for taking regulatory action against those licensed institutions. This framework is supplemented by some supervisory powers and other requirements in relation to Authorised Market Institutions in the Markets Law 2012. The Laws provide for the creation of Rules in relation to these activities. This module contains those Rules.
3. The Markets Law 2012 further establishes a framework in relation to how an Official List of Securities is administered by the Listing Authority.

1.2 Financial Services, ancillary services, official lists of securities and Authorised Market Institutions

Guidance

Financial Services

1. The GEN module prescribes the Financial Services which may be carried on by an Authorised Firm or Authorised Market Institution.

Ancillary Services

2. Article 44(1) of the Regulatory Law 2004 prohibits a Person from carrying on Ancillary Services in or from the DIFC unless they are carried on by an Ancillary Services Provider whose registration allows it to do so.

Authorised Market Institutions and regulatory processes

3. In addition to this module, the RPP Sourcebook sets out some of the regulatory process, in relation to Authorised Market Institutions. The regulatory processes contained here supplement other Rules that relate to Authorised Market Institutions. These are set out in the GEN, RPP, ENF and MKT modules of the Rulebook.
4. The following modules of the Rulebook, in addition to this module, apply to Authorised Market Institutions:

Module	Applicable chapters
General (GEN)	1, 2, 3, 5, 6, 7 and 8
Enforcement (ENF)	All chapters
Islamic Finance Rules (IFR)	2, 3 and 4

The AMI module

5. Chapters 2 to 5 and chapter 7 set out the requirements for a new Licence application and also an application by an existing Authorised Market Institution to change the scope of its existing Licence.
6. Chapters 8, 9, 10 and 11 contain Rules relating to the ongoing obligations and supervision of Authorised Market Institutions and are in addition to those set out in SUP and include a series of notification requirements, anti money laundering provisions and supervisory directions that may be made by the DFSA to Authorised Market Institutions under Article 26 of the Markets Law 2012.
7. Chapter 12 refers to ENF which describes the DFSA's enforcement powers under the Regulatory Law and outlines the policy for using these powers. ENF also establishes the framework for the DFSA's decision making process and the giving of notice in relation to enforcement powers.

Change in control

8. Chapter 6 of this module covers the requirements with regard to changes and proposed changes to an Authorised Market Institution's Controllers.

Official lists of securities

9. Chapter 7 contains a specific Licensing Requirement for applicants who wish to maintain an Official List of Securities. Chapter 10 contains some disclosure requirements in respect of listing decisions by an Authorised Market Institution and also some supervisory powers in relation to listings.

2 APPLICATION FOR A LICENCE

2.1 Application

2.1.1 This chapter applies to a Person who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House in or from the DIFC.

2.1.2 A Person who intends to carry on either or both of the Financial Services is referred to in this chapter as an applicant.

2.2 Licence application

2.2.1 An applicant who intends to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House must apply to the DFSA for a Licence in accordance with the Rules in this chapter.

Guidance

1. If a Person intends to carry on a Financial Service which is not:
 - a. Operating an Exchange; or
 - b. Operating a Clearing House;it should apply to the DFSA for a Licence in accordance with the Rules in AUT.
2. If a Person intends to carry on the Financial Service of Operating an Exchange or Operating a Clearing House without having a physical presence in the DIFC, it should apply for a Recognition Notice in accordance with the Rules in REC.

2.2.2 The DFSA will only consider an application for a Licence from an applicant who is a Body Corporate and who is not an Authorised Firm or an applicant to be an Authorised Firm.

2.2.3 A Person applying for a Licence must submit a written application to the DFSA:

- (a) demonstrating how the applicant intends to satisfy the Licensing Requirements and any other applicable requirements; and
- (b) with copies of any relevant agreements or other information in relation to the application.

2.2.4 (1) An applicant will only be authorised to carry on either or both of the Financial Services of Operating an Exchange or Operating a Clearing House if the DFSA is satisfied that the applicant:

- (a) has satisfied or will satisfy the Licensing Requirements in relation to the nature of the Financial Services concerned;

- (b) if applicable, will maintain an Official List of Securities, in a proper and independent manner;
 - (c) is fit and proper; and
 - (d) will conduct and manage its affairs in a sound and prudent manner.
- (2) In making the assessment as to whether an applicant is fit and proper, the DFSA will consider:
- (a) the fitness and propriety of the members of its Governing Body;
 - (b) the suitability of the applicant's Controllers or any other Person;
 - (c) the likely impact a Controller might have on the applicant's ability to comply with the applicable requirements;
 - (d) the Financial Services concerned;
 - (e) any matter which may harm or may have harmed the integrity or the reputation of the DIFC;
 - (f) the activities of the applicant, the associated risks and accumulation of risks, that those activities pose to the DFSA's objectives;
 - (g) the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant; and
 - (h) any other relevant matters.

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

- (a) carry out any enquiries which it considers appropriate including enquiries independent of the applicant;
- (b) require the applicant to provide additional information in such form as the DFSA considers appropriate;
- (c) require any information submitted by the applicant to be verified in such manner as the DFSA may specify; and
- (d) take into account any information which the DFSA considers relevant.

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

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

3 APPLICATION TO CHANGE THE SCOPE OF A LICENCE

3.1 Application

3.1.1 This chapter applies to an Authorised Market Institution applying to change the scope of its Licence or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.

3.1.2 An Authorised Market Institution applying to change the scope of its Licence, or to have a condition or restriction varied or withdrawn, must provide the DFSA with written details of the proposed changes including an assessment of how it intends to satisfy the Licensing Requirements in relation to the new Licence scope.

Guidance

Where an Authorised Market Institution applies to change the scope of its Licence, it should provide at least the following information:

- a. particulars of the new Financial Service or varied scope and the date of the proposed commencement of activities;
- b. a revised business plan as appropriate, describing the basis of, and rationale for, the proposed change;
- c. details of the extent to which existing documentation, procedures, systems and controls will be amended to take into account any additional activities, and how the Authorised Market Institution will be able to comply with any additional regulatory requirements including the Licensing Requirements; and
- d. if the Authorised Market Institution is reducing its activities and it has existing Members who may be affected by the cessation of a Financial Service, details of any transitional arrangements.



4 NOT CURRENTLY IN USE

5 WITHDRAWAL OF A LICENCE

5.1 Application

5.1.1 This chapter applies to an Authorised Market Institution.

5.2 Withdrawal of a licence at an Authorised Market Institution's request

- 5.2.1**
- (1) An Authorised Market Institution must continue to carry on every Financial Service it is authorised to conduct under its Licence until its Licence is withdrawn or the DFSA consents in writing.
 - (2) An Authorised Market Institution seeking to have its Licence withdrawn must submit a request in writing stating:
 - (a) the reasons for the request;
 - (b) the date on which it will cease to carry on Financial Services in or from the DIFC;
 - (c) where applicable, how persons with Securities admitted to an Official List of Securities are affected and any alternative arrangements made for the listing and trading of the relevant Securities; and
 - (d) that it has discharged, or will discharge, all obligations owed to its users in respect of whom the Authorised Market Institution has carried on Financial Services in or from the DIFC.

Guidance

1. The DFSA will need to be satisfied when considering requests under Rule 5.2.1, that an Authorised Market Institution has made appropriate arrangements with respect to its existing users (including the receipt of consent where required) and, in particular:
 - a. whether there may be a long period in which the business will be wound down or transferred;
 - b. whether money and other assets belonging to users must be returned to them; and
 - c. whether there is any other matter which the DFSA would reasonably expect to be resolved before granting a request for the withdrawal of a Licence.
2. In determining a request for the withdrawal of a Licence, the DFSA may require additional procedures or information as appropriate including evidence that the Authorised Market Institution has ceased to carry on Financial Services.

3. Detailed plans should be submitted where there may be an extensive period of wind-down. It may not be appropriate for an Authorised Market Institution to immediately request a withdrawal of its Licence in all circumstances, although it may wish to consider reducing the scope of its Licence during this period. Authorised Market Institutions should discuss these arrangements with the DFSA.
4. The DFSA may refuse a request for the withdrawal of a Licence where it appears that users and customers may be adversely affected.
5. The DFSA may also refuse a request for the withdrawal of a Licence where:
 - a. the Authorised Market Institution has failed to settle its debts to the DFSA; or
 - b. it is in the interests of a current or pending investigation by the DFSA, or by another regulatory body or Financial Services Regulator.
6. Under Article 63 where the DFSA grants a request for the withdrawal of a Licence, the DFSA may continue to exercise any power under the Regulatory Law, the Markets Law or Rules in relation to an Authorised Market Institution for two years from the date on which the Licence was withdrawn.

5.3 Withdrawal of a licence on the DFSA's initiative

Guidance

In section 5.2 above, an application to withdraw a Licence will be at the Authorised Market Institution's request. Under Article 51, the DFSA may act on its own initiative to withdraw an Authorised Market Institution's Licence in cases when the Authorised Market Institution no longer has authority to carry on any Financial Service, is no longer meeting the conditions of its Licence or has failed to remove a Controller in the circumstances described in Article 64.

6 CONTROLLERS

6.1 Application

6.1.1 This chapter applies to:

- (a) an Authorised Market Institution; or
- (b) a Person who is a Controller as defined in Rule 6.1.2.

Definition of a Controller

6.1.2 (1) A Controller is a Person who, either alone or with any Associate:

- (a) holds 10% or more of the shares in either the Authorised Market Institution or a Holding Company of that institution;
- (b) is entitled to exercise, or control the exercise of, 10% or more of the voting rights in either the Authorised Market Institution or a Holding Company of that institution; or
- (c) is able to exercise significant influence over the management of the Authorised Market Institution as a result of holding shares or being able to exercise voting rights in the Authorised Market Institution or a Holding Company of that institution or having a current exercisable right to acquire such shares or voting rights.

(2) A reference in this chapter to:

- (a) a share means:
 - (i) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution which has a share capital, its allotted shares;
 - (ii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution with capital but no share capital, rights to a share in its capital; and
 - (iii) in the case of an Authorised Market Institution or a Holding Company of an Authorised Market Institution without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its winding up.
- (b) “a holding” means, in respect of a Person, shares, voting rights or a right to acquire shares or voting rights in an Authorised Market Institution or a Holding Company of that institution held by that Person either alone or with any Associate.

Guidance

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the DIFC Companies Law. That definition provides when one body corporate is considered to be a holding company or a subsidiary of another body corporate and extends that concept to the ultimate holding company of the body corporate.
2. Pursuant to Rule 6.1.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over an Authorised Market Institution. The ability to exert significant management influence can arise even where a Person, alone or with Associates, controls less than 10% of the shares or voting rights of the Authorised Market Institution or a Holding Company of that institution. Similarly, a Person may be able to exert significant management influence where such Person does not hold shares or voting rights but has exercisable rights to acquire shares or voting rights, such as under Options.

Disregarded holdings

6.1.3 For the purposes of determining whether a Person is a Controller, shares, voting rights or rights to acquire shares or voting rights that a Person holds, either alone or with an Associate, in an Authorised Market Institution or a Holding Company of that institution are disregarded if:

- (a) the shares are held for the sole purpose of clearing and settling within a short settlement cycle;
- (b) the shares are held in a custodial or nominee capacity and the voting rights attached to the shares are exercised only in accordance with written instructions given to that Person by another Person; or
- (c) the Person is an Authorised Firm or a Regulated Financial Institution and it:
 - (i) acquires a holding of shares as a result of an underwriting of a share issue or a placement of shares on a firm commitment basis;
 - (ii) does not exercise the voting rights attaching to the shares or otherwise intervene in the management of the issuer; and
 - (iii) retains the holding for a period less than one year.

6.2 Changes in relating to control**Requirement for prior approval of Controllers of an Authorised Market Institution incorporated under DIFC law**

- 6.2.1** (1) In the case of an Authorised Market Institution which is incorporated under DIFC law, a Person must not:
- (a) become a Controller of the Authorised Market Institution; or

- (b) increase the level of control which that Person has in the Authorised Market Institution beyond a threshold specified in (2),
unless that Person has obtained the prior written approval of the DFSA to do so.
- (2) For the purposes of (1)(b), the thresholds at which the prior written approval of the DFSA is required are when the relevant holding is increased:
 - (a) from below 30% to 30% or more; or
 - (b) from below 50% to 50% or more.

Guidance

See Rule 6.1.2 for the circumstances in which a Person becomes a Controller of an Authorised Market Institution.

Approval process

- 6.2.2** (1) A Person who is required to obtain the prior written approval of the DFSA pursuant to Rule 6.2.1(1) must make an application to the DFSA using the appropriate form in AFN.
- (2) Where the DFSA receives an application under (1), it may:
 - (a) approve the proposed acquisition or increase in the level of control;
 - (b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or
 - (c) object to the proposed acquisition or increase in the level of control.

Guidance

1. A Person intending to acquire or increase control in an Authorised Firm should submit an application for approval in the appropriate form in AFN sufficiently in advance of the proposed acquisition to be able to obtain the DFSA approval in time for the proposed acquisition.
2. Section 3.6.7 of the RPP Sourcebook sets out the matters which the DFSA takes into consideration when exercising its powers under Rule 6.2.2 to approve, object to or impose conditions of approval relating to a proposed Controller or an increase in the level of control of an existing Controller.

- 6.2.3** (1) Where the DFSA proposes to approve a proposed acquisition of or an increase in the level of control in an Authorised Market Institution pursuant to Rule 6.2.2(2)(a), it must:
 - (a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different

period is considered appropriate by the DFSA and notified to the applicant in writing; and

- (b) issue to the applicant, and where appropriate to the Authorised Market Institution, an approval notice as soon as practicable after making that decision.
- (2) An approval, including a conditional approval granted by the DFSA pursuant to Rule 6.2.2(2)(a) or (b), is valid for a period of one year from the date of the approval, unless an extension is granted by the DFSA in writing.

Guidance

1. If the application for approval lodged with the DFSA does not contain all the required information, then the 90 day period runs from the date on which all the relevant information is provided to the DFSA.
2. If a Person who has obtained prior DFSA approval for an acquisition of or an increase in the control in an Authorised Market Institution is unable to effect the acquisition before the end of the period referred to in Rule 6.2.3(2), it will need to obtain fresh approval from the DFSA.

Objection or conditional approval process

- 6.2.4** (1) Where the DFSA proposes to exercise its objections or conditional approval power pursuant to Rule 6.2.4(2)(b) or (c) in respect of a proposed acquisition or an increase in the level of control in an Authorised Market Institution, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:
- (a) a written notice stating;
 - (i) the DFSA's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such objections notice or such other longer period as agreed to by the DFSA.
- (2) The DFSA must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or

- (c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Authorised Firm.

Guidance

A final decision made by the DFSA pursuant to Rule 6.2.5(4)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

- 6.2.5**
- (1) A Person who has been approved by the DFSA as a Controller of an Authorised Market Institution subject to any conditions must comply with the relevant conditions of approval.
 - (2) A Person who has been notified by the DFSA pursuant to Rule 6.2.4(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Authorised Market Institution.

Guidance

A Person who acquires control of or increases the level of control in an Authorised Market Institution without the prior DFSA approval or breaches a condition of approval is in breach of the Rules. See Rule 6.2.10 for the actions that the DFSA may take in such circumstances.

Notification for decrease in the level of control of an AMI incorporated under DIFC law

- 6.2.6**
- A Controller of an Authorised Market Institution which is incorporated under DIFC law must submit, using the appropriate form in AFN, a written notification to the DFSA where that Person:
- (a) proposes to cease being a Controller; or
 - (b) proposes to decrease the existing holding from more than 50% to 50% or less.

Notification for changes in control relating to an Authorised Market Institution incorporated under non-DIFC law

- 6.2.7**
- (1) In the case of an Authorised Market Institution which is incorporated other than under DIFC law, a written notification to the DFSA must be submitted by a Controller or a Person proposing to become a Controller in accordance with (3) in respect of any one of the events specified in (2).
 - (2) For the purposes of (1), a notification to the DFSA is required when:
 - (a) a Person becomes a Controller;
 - (b) an existing Controller proposes to cease being a Controller; or
 - (c) an existing Controller's holding is:
 - (i) increased from below 30% to 30% or more;
 - (ii) increased from below 50% to 50% or more; or

- (iii) decreased from more than 50% to 50% or less.
- (3) The notification required under (1) must be made using the appropriate form in AFN as soon as possible, and in any event, before making the relevant acquisition or disposition.

Obligations of an Authorised Market Institution relating to its Controllers

- 6.2.8**
- (1) An Authorised Market Institution must have adequate systems and controls to monitor:
 - (a) any change or proposed change of its Controllers; and
 - (b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact the fitness and propriety of the Authorised Market Institution or its ability to conduct business soundly and prudently.
 - (2) An Authorised Market Institution must, subject to (3), notify the DFSA in writing of any event specified in (1) as soon as possible after becoming aware of that event.
 - (3) An Authorised Market Institution need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the DFSA or notified the event to the DFSA as applicable.

Guidance

Steps which an Authorised Market Institution may take in order to monitor changes relating to its Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote, or the control of voting rights, at general meetings.

- 6.2.9**
- (1) An Authorised Market Institution must submit to the DFSA an annual report on its Controllers within four months of its financial year end.
 - (2) The Authorised Market Institution's annual report on its Controllers must include:
 - (a) the name of each Controller; and
 - (b) the current holding of each Controller, expressed as a percentage.

Guidance

- 1. An Authorised Market Institution may satisfy the requirements of Rule 6.2.9 by submitting a corporate structure diagram containing the relevant information.
- 2. An Authorised Market Institution must take account of the holdings which the Controller, either alone or with an Associate, has in the Authorised Market Institution or any Holding Company of that institution (see the definition of a Controller in Rule 6.1.2).

Other powers relating to Controllers

- 6.2.10** (1) Without limiting the generality of its other powers, the DFSA may, subject only to (2), object to a Person as a Controller of an Authorised Market Institution where such a Person:
- (a) has acquired or increased the level of control that Person has in an Authorised Market Institution without the prior written approval of the DFSA as required under Rule 6.2.1;
 - (b) has breached the requirement in Rule 6.2.5 to comply with conditions of approval applicable to that Person; or
 - (c) is no longer acceptable to the DFSA as a Controller.
- (2) Where the DFSA proposes to object to a Person as a Controller of an Authorised Market Institution, the DFSA must provide such a Person with:
- (a) a written notice stating:
 - (i) the DFSA's reasons for objecting to that Person as a Controller; and
 - (ii) any proposed conditions subject to which that Person may be approved by the DFSA; and
 - (b) an opportunity to make representations within 14 days of the receipt of such notice or such other longer period as agreed to by the DFSA.
- (3) The DFSA must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
 - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
 - (c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's holdings.
- (4) Where the DFSA has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.
- (5) Where the DFSA has issued a final notice declaring a Person to be an unacceptable Controller, that Person must dispose of the relevant holdings within such period as specified in the final notice.

Guidance

Refer to section 3.6.1 of the RPP Sourcebook for matters which the DFSA takes into consideration when exercising its powers under Rule 6.2.10. A final decision made by the DFSA pursuant to Rule 6.2.10(3)(b) or (c) is appealable to the Regulatory Appeals Committee (see Article 27(2)(i) of the Regulatory Law 2004).

7 LICENSING REQUIREMENTS

7.1 Application

7.1.1 This chapter applies to an Authorised Market Institution and an applicant for a Licence to be an Authorised Market Institution.

7.2 Licensing requirements

Guidance

This section sets out the Licensing Requirements which an Authorised Market Institution must meet in order to be licensed and thereafter.

- 7.2.1**
- (1) An Authorised Market Institution must be able to satisfy the Licensing Requirements to the satisfaction of the DFSA at the time a Licence is granted and at all times thereafter.
 - (2) The Licensing Requirements referred to in (1) are set out in this section and contain requirements relating to:
 - (a) fitness and propriety;
 - (b) proper markets;
 - (c) financial resources;
 - (d) human and technology resources;
 - (e) systems and controls;
 - (f) Members' access to facilities;
 - (g) general safeguards for investors;
 - (h) identification, deterrence and prevention of Market Misconduct, financial crime and money laundering
 - (i) promotion and maintenance of standards;
 - (j) whistle blowing;
 - (k) clearing and settlement;
 - (l) transaction recording;
 - (m) safeguarding and administration of assets;
 - (n) Business Rules;

- (o) compliance with Business Rules;
- (p) complaints;
- (q) default rules;
- (r) an Official List of Securities; and
- (s) compliance with listing rules.

Fit and proper - constitution, regulation and governance

- 7.2.2** (1) An Authorised Market Institution must:
- (a) be fit and proper;
 - (b) be appropriately constituted;
 - (c) have taken appropriate measures to:
 - (i) satisfy the Licensing Requirements; and
 - (ii) perform its Regulatory Functions;
 - (d) have a corporate governance framework appropriate to the nature, scale and complexity of its business and structure, which are adequate to promote the sound and prudent management and oversight of the Authorised Market Institution's business and to protect the interests of its stakeholders; and
 - (e) have a remuneration structure and strategies which are well aligned with the long term interests of the Authorised Market Institution, and appropriate to the nature, scale and complexity of its business.
- (2) In particular, the Governing Body of an Authorised Market Institution must:
- (a) demonstrate integrity, competence and commitment to satisfying its obligations under the Licensing Requirements;
 - (b) assign Key Individuals with appropriate levels of experience, knowledge and qualifications to oversee the Regulatory Functions;
 - (c) appoint a Key Individual who is ordinarily resident in the United Arab Emirates as a Money Laundering Reporting Officer;
 - (d) have independent directors constituting at least one-half of the total number of directors in the Governing Body and ensure that these independent directors are provided with direct access to:
 - (i) Key Individuals when required; and

- (ii) all relevant information concerning the satisfaction of Licensing Requirements and the performance of Regulatory Functions; and
 - (e) ensure that Key Individuals have unfettered, direct access to the Governing Body.
- (3) For the purposes of this Rule and Article 23(2)(f)(ii) of the Regulatory Law, Regulatory Functions are those functions of an Authorised Market Institution which contribute directly to the satisfaction by the Authorised Market Institution of a Licensing Requirement.
- (4) An Exchange maintaining an Official List of Securities must ensure the function is properly and independently operated.

Guidance

Section 2-2 of the RPP Sourcebook sets out matters which the DFSA takes into consideration when making an assessment of the kind under Rule 7.2.2.

Proper markets

- 7.2.3**
- (1) An Exchange must have systems, policies and procedures which ensure that only:
 - (a) Investments in which there is a proper market; or
 - (b) those Securities which are admitted to its Official List of Securities;are admitted to trading.
 - (2) For a proper market to exist:
 - (a) arrangements must be in place for relevant market information to be made available to Persons engaged in dealing on an equitable basis;
 - (b) Investments must serve an economic purpose;
 - (c) there must be a sufficient range and number of investors willing and able to generate adequate supply and demand in the Investments;
 - (d) where appropriate, there must be a sufficiently liquid underlying cash market;
 - (e) where appropriate, there must be capacity to make and take delivery of the Investments; and
 - (f) the Business Rules and listing rules of an Exchange must allow for the discontinuance or suspension of trading in Investments when disclosure obligations have not been complied with and in other appropriate circumstances.

- (3) Securities in which there is a proper market and which are listed in a jurisdiction acceptable to the DFSA meet the requirements in this Rule relating to proper markets.

Guidance

1. Before admitting Securities listed in jurisdictions elsewhere to trading, or any other type of Investment such as a derivative product to trading, the Authorised Market Institution should consider the following factors to determine whether a proper market exists in that Investment:
 - a. any restrictions whether legal or physical on Persons who may hold the Investment;
 - b. the liquidity or anticipated liquidity of the Investments;
 - c. the number of persons already holding the Investments or interested in dealing in the Investments;
 - d. whether there is sufficient relevant information available to allow market participants to make an informed judgement on the value of assets and underlying assets;
 - e. how the information required by market participants to make an informed assessment of the value of the Investments can be accessed; and
 - f. whether there are adequate settlement and delivery procedures in relation to the Investments.
2. In determining whether Inside Information is disclosed to allow investors to make an informed judgement of the value of the Investments, the DFSA may consider the extent to which persons can obtain information about Investments through acceptable channels of communication such as through third party information vendors. Where there is no alternative way to obtain information about an Investment, the Authorised Market Institution will need to provide those services.

Financial resources

- 7.2.4** (1) An Authorised Market Institution must have and maintain at all times, in addition to the minimum financial resource requirement in (2), financial resources of a type acceptable to the DFSA. These financial resources must be adequate in relation to the nature, size and complexity of its business to ensure that there is no significant risk that liabilities cannot be met as they fall due.
- (2) The minimum financial resource requirement for an Authorised Market Institution is:
- (a) an amount equal to one half of the estimated gross operating costs of the Authorised Market Institution for the next twelve-month period; or
 - (b) such other base capital amount as may be set by the DFSA under (4).
- (3) When calculating its twelve-month gross operation costs, an Authorised Market Institution must also include any penalty payments for which it has become liable as part of any outsourcing or other arrangements

which are integral to its being able to function as an Authorised Market Institution.

- (4) The DFSA may prescribe a base capital amount for an Authorised Market Institution and will determine such amount by reference to other international jurisdictions deemed by the DFSA to be comparable.
- (5) An Authorised Market Institution must have systems and controls to enable it to determine and monitor whether its financial resources are sufficient for the purposes of the additional financial resource requirement in (1) and the minimum financial resource requirement in (2).
- (6) For the purposes of (5), the systems and controls of an Authorised Market Institution address the following factors, with any others that are appropriate to its operations model:
 - (a) the scale, nature, activities and risks of the operation;
 - (b) the operational, counterparty, market and settlement risks to which the body is exposed;
 - (c) the amount, composition and legal position of its available financial resources; and
 - (d) its ability to access additional financial resources if required.

Guidance

1. The financial resource requirement is intended to ensure that an Authorised Market Institution not only has sufficient financial resources to meet its liabilities as they fall due, but also to allow, if circumstances require, for the orderly wind-down of the Authorised Market Institution's business, while still allowing the institution to meet the conditions of its Licence.
2. The systems and controls should be such as to enable an assessment of the financial resources required to be conducted periodically or after any significant change or event, whether internal or external, to the Authorised Market Institution, which may require re-assessment. This regular re-assessment is necessary to satisfy the DFSA that the Licensing Requirements are being satisfied on an ongoing basis and the DFSA will often request to see the conclusions.
3. In determining whether to set a base capital amount the DFSA will take into account the risks that the Authorised Market Institution poses to the DIFC market and products which it intends, or is, trading, clearing or settling.
4. A Clearing House which offers central counterparty services will need to have adequate financial resources in place to cover the credit risk it assumes when acting in this capacity. Financial resources which may satisfy this Licensing Requirement include:
 - a. capital and resources held by the Authorised Market Institution for this purpose;
 - b. clearing guarantee funds;
 - c. legally enforceable lines of credit;
 - d. insurance policies; and

- e. other powers to call on resources in appropriate cases.

Human and technology resources

- 7.2.5**
- (1) An Authorised Market Institution must have sufficient human and independent technology resources to operate and supervise its facilities.
 - (2) An Authorised Market Institution must ensure, as far as reasonably practical, that its staff are:
 - (a) fit and proper;
 - (b) appropriately trained for the duties they perform; and
 - (c) trained in the requirements of the legislation applicable in the DIFC.
 - (3) The Authorised Market Institution must satisfy the DFSA that its technology resources are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

Guidance

- 1. In assessing an Authorised Market Institution's systems and controls used to operate and carry on its functions, the DFSA recognises that an Authorised Market Institution is likely to have significant reliance on its information technology systems. In assessing the adequacy of these systems, the DFSA will consider:
 - a. the organisation, management and resources of the information technology department of the Authorised Market Institution;
 - b. the arrangements for controlling and documenting the design, development, implementation and use of technology systems; and
 - c. the performance, capacity and reliability of information technology systems.
- 2. The DFSA shall also, during its assessment of technology systems, have regard to the:
 - a. procedure for the evaluation and selection of information technology systems;
 - b. procedures for problem management and system change;
 - c. arrangements for testing information technology systems before live operations;
 - d. arrangements to monitor and report system performance, availability and integrity;
 - e. arrangements made to ensure information technology systems are resilient and not prone to failure;
 - f. arrangements made to ensure business continuity in the event that an information technology system fails;

- g arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access;
- h. arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems; and
- i. any third party outsourcing arrangements.

Systems and controls

- 7.2.6** (1) An Authorised Market Institution must ensure that its systems and controls are adequate and suitable for the performance of its functions and appropriate to the scale and nature of its operations. In particular, systems and controls should exist in relation to:
- (a) the transmission of information to users of its facilities;
 - (b) the assessment and management of risks including conflicts of interest;
 - (c) the operation of its functions;
 - (d) the safeguarding and administration of assets belonging to its users; and
 - (e) the fitness and propriety of its Employees and the adequacy of its technology resources.
- (2) An Exchange must also have systems and controls in relation to the supervision and monitoring of transactions on its facilities.
- (3) An Authorised Market Institution must undertake regular reviews of its systems and controls.

Guidance

1. The systems and controls Licensing Requirement exists in addition to the requirements of GEN chapter 5.
2. In assessing whether an Authorised Market Institution's systems and controls are adequate and appropriate for the scale and nature of its business, the DFSA will have regard to the Authorised Market Institution's arrangements for managing, controlling and carrying out its Regulatory Functions, including:
 - a. the distribution of duties and responsibilities among its Key Individuals and the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;
 - b. the staffing and resources of the departments of the Authorised Market Institution responsible for performing its Regulatory Functions;
 - c. the arrangements made to enable Key Individuals to supervise the departments for which they are responsible;
 - d. the arrangements for appointing and supervising the performance of Key Individuals and their departments; and

- e. the arrangements by which the Governing Body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of Key Individuals under review.
3. In assessing an Authorised Market Institution's systems and controls for the transmission of information, the DFSA will consider to the extent to which these systems and controls ensure the information is transmitted promptly and accurately:
 - a. within the Authorised Market Institution itself;
 - b. to Members; and
 - c. where appropriate, to other market participants or other persons including the DFSA.
4. In assessing an Authorised Market Institution's systems and controls for assessing and managing risk, the DFSA may also have regard to the extent to which these systems and controls enable the Authorised Market Institution to:
 - a. identify all the general, operational, legal and market risks wherever they arise in its activities;
 - b. measure and control the different types of risk;
 - c. allocate responsibility for risk management to persons with appropriate levels of knowledge and expertise; and
 - d. provide sufficient, reliable information to Key Individuals and, where relevant, the Governing Body of the Authorised Market Institution.
5. Where the Clearing House assumes counterparty risk, the DFSA will consider:
 - a. the position and role of the risk management department within the Clearing House;
 - b. the frequency with which exposures and risks are monitored against limits or other control parameters and the frequency with which these parameters are reviewed;
 - c. the reliability and robustness of intra-day monitoring and counterparty risk management;
 - d. the arrangements for calculating, collecting and holding margin payments and the allocation of losses; and
 - e. arrangements for stress testing the risk model in unusual market conditions and in recognition of the amount of capital resources maintained by the Clearing House to cover its exposure which may arise, for example, with substantial movements in market values or counterparty defaults.
6. An Authorised Market Institution should have proper procedures and policies to allocate responsibility for regulatory decisions so that it can take proper regulatory decisions notwithstanding any conflicts of interest arising from the performance of its regulatory functions and commercial objectives. The policies and procedures should include:
 - a. policies on the use of confidential information received in carrying out its Regulatory Functions and to ensure it is only used for proper purposes;
 - b. arrangements for transferring decisions or responsibilities to alternates in individual cases;

- c. arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which the conflict is relevant; and
 - d. the contracts of employment, staff rules, letters of appointment for members of the Governing Body, members of relevant committees and other Key Individuals and other guidance given to individuals on handling conflicts of interest which may include:
 - i. the need for prompt disclosure of a conflict of interest to enable others who are not affected by the conflict to assist in deciding how it may need to be covered;
 - ii. the circumstances in which a general disclosure of conflicts of interest in advance of any particular instance in which a conflict of interest arises may be sufficient;
 - iii. the circumstances in which a general advance disclosure may not be adequate;
 - iv. the circumstances in which it would be appropriate for a conflicted individual to withdraw from any involvement in the matter concerned, without disclosing the interests; and
 - v. the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-making process or from access to relevant information.
7. In assessing an Authorised Market Institution's systems and controls for the safeguarding and administration of assets belonging to users of the facilities, the DFSA will consider:
- a. records of the assets held and the identity of the owners of (and other persons with relevant rights over) those assets;
 - b. records of any instructions given in relation to those assets;
 - c. records of the carrying out of those instructions;
 - d. records of any movements in those assets (or any corporate actions or other events in relation to those assets); and
 - e. how an Authorised Market Institution reconciles its records of assets held with the records of any custodian or sub-custodian used to hold those assets, and with the record of beneficial or legal ownership of those assets.
8. In assessing an Exchange's systems and controls for the effecting and monitoring of transactions, the DFSA will consider the arrangements under which:
- a. orders are received and matched;
 - b. transactions are reported;
 - c. relevant information is transmitted to a Clearing House; and
 - d. conduct that may amount to Market Misconduct is identified using surveillance systems.

9. The DFSA will also consider how internal and external audits operate in the context of systems and controls. In doing so the following factors may be considered:
 - a. the size, composition and terms of reference of any audit committee of the Authorised Market Institution;
 - b. the frequency and scope of external audit;
 - c. the provision and scope of internal audit;
 - d. the staffing and resources of the Authorised Market Institution's internal audit department;
 - e. the internal audit department's access to the Authorised Market Institution's records and other relevant information; and
 - f. the position, responsibilities and reporting lines of the audit department and its relationship with other departments of the Authorised Market Institution.

Members' access to facilities

7.2.7 Subject to 7.2.10, an Authorised Market Institution must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.

7.2.8 An Authorised Market Institution must ensure that the rules made pursuant to Rule 7.2.7 are:

- (a) approved by the DFSA;
- (b) designed to protect the orderly functioning of its facilities and interests of investors; and
- (c) published in its Business Rules.

7.2.9 An Authorised Market Institution may only admit as a Member:

- (a) Authorised Person;
- (b) a Person who is admitted to the list of Recognised Persons pursuant to Article 37 of the Markets Law 2012; or
- (c) a Person who meets the criteria in GEN Rule 2.3.2(2).

7.2.10 An Authorised Market Institution must not admit as a Member a Recognised Member or a Person meeting the criteria in GEN Rule 2.3.2(2) unless such Recognised Member or Person:

- (a) agrees in writing to submit unconditionally to the jurisdiction of the DFSA in relation to any matters which arise out of or which relate to its use of the facilities of an Authorised Market Institution,
- (b) agrees in writing to submit unconditionally to the jurisdiction of the DIFC Courts in relation to any proceedings in the DIFC, which arise out of or relate to its use of the facilities of an Authorised Market Institution

- (c) subjects itself to the DIFC laws and the jurisdiction of the DIFC Courts in relation to its use of the facilities of an Authorised Market Institution; and
- (d) appoints and maintains at all times an agent for service of process in the DIFC and requires such agent to accept its appointment for service of process.

Guidance

1. In assessing the criteria used by an Authorised Market Institution to permit access to its facilities, the DFSA will consider:
 - a. whether its Business Rules can be enforced contractually over Persons granted access to its facilities;
 - b. whether the criteria are objective and applied in a non-discriminatory manner;
 - c. if the persons granted access to the facilities are subject to training, competence and experience checks;
 - d. how electronic access is approved and the measures taken to prevent or resolve problems which would arise from the failure of this access; and
 - e. the financial resource requirements for those not authorised by the DFSA.
2. In assessing how electronic access is approved, the DFSA will consider:
 - a. the rules and guidance governing persons procedures, controls and security arrangements for inputting instructions into the system;
 - b. the rules and guidance governing facilities offered to third persons for inputting instructions into the system and restrictions placed on the use of those systems;
 - c. the rules and practices to detect, identify and halt or remove instructions breaching any relevant instructions;
 - d. the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
 - e. the procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

General safeguards for investors**7.2.11**

An Authorised Market Institution must have Business Rules, procedures and an effective surveillance program that:

- (a) ensures that business conducted on or through its facilities is conducted in an orderly manner so as to afford proper protection to investors; and
- (b) monitors for conduct which may amount to Market Misconduct, financial crime or money laundering.

Guidance

1. To satisfy the DFSA that Rule 7.2.11(a) is met, an Authorised Market Institution should have rules and procedures in place for:

- a. preventing and detecting the use of its facilities for abusive, improper or fraudulent purposes;
 - b. preventing the improper, reckless or negligent use of its facilities;
 - c. users to monitor and raise queries about business conducted on or through the facilities; and
 - d. enable users to comply with any relevant regulatory or legal requirements.
2. Abusive, improper and fraudulent purposes include:
- a. trades in which a party is improperly indemnified against losses;
 - b. trades intended to create a false appearance of trading activity;
 - c. pre-arranged or pre-negotiated trades;
 - d. trades which one party does not intend to close out or settle;
 - e. conduct which is likely to result in disorderly trading in the market; and
 - f. any contravention of Part 8 of the Market Misconduct provisions of the Markets Law.
3. An Authorised Market Institution must have an effective surveillance system in place for:
- a. the coordinated surveillance of all activity on or through its facilities and activity in related Investments conducted elsewhere; and
 - b. communicating information about Market Misconduct, financial crime and money laundering to the DFSA or appropriate regulatory authorities.
4. In determining whether an Exchange is ensuring that business conducted on its facilities is conducted in an orderly manner the DFSA will consider:
- a. arrangements for pre and post trade transparency taking into account the nature and liquidity of the Investments traded; and
 - b. the need to provide anonymity for trading participants.
5. An Exchange will also have appropriate procedures allowing it to influence trading conditions, suspend trading promptly when required, and to support or encourage liquidity when necessary to maintain an orderly market. The DFSA will consider the transparency of such procedures and the fairness of their application and potential application.
6. In addition, Members should be able to satisfy any other legal obligations they may have, including those to Clients that may exist under COB.
7. In pursuit of the detection and prevention of Market Misconduct and financial crime, an Authorised Market Institution should communicate information promptly and accurately to the DFSA and other appropriate organisations under the guidance of the DFSA. An Authorised Market Institution should also co-operate with the DFSA and such organisations in any ensuing investigation. If an Authorised Market Institution has concerns about sharing such information it should seek guidance and act on instructions from the DFSA.
8. An Authorised Market Institution shall have regard to Part 8 of the Markets Law in relation to Market Misconduct and the relevant provisions of the Regulatory Law.

Market misconduct, financial crime and money laundering

7.2.12 An Authorised Market Institution must:

- (a) operate appropriate measures to identify, deter and prevent Market Misconduct, financial crime and money laundering on and through the Authorised Market Institution's facilities; and
- (b) report to the DFSA any Market Misconduct, financial crime and money laundering.

Guidance

1. In determining whether an Authorised Market Institution's measures are appropriate to reduce the extent to which its facilities can be used for Market Misconduct, financial crime or money laundering, the DFSA will consider:
 - a. whether the Authorised Market Institution has appropriate staff, surveillance systems, resources and procedures for this purpose;
 - b. the monitoring conducted for possible patterns of normal, abnormal or improper use of those facilities;
 - c. how promptly and accurately information is communicated about Market Misconduct, financial crime and money laundering to the DFSA and other appropriate organisations;
 - d. how the Authorised Market Institution co-operates with relevant bodies in the prevention, investigation and pursuit of Market Misconduct, financial crime and money laundering; and
 - e. whether the Authorised Market Institution is able to demonstrate that it can comply with the applicable Federal Laws, DIFC Laws and Rules and in particular:
 - i. the Markets Law 2012;
 - ii. the Regulatory Law 2012;
 - iii. the Federal Law No. 4 of 2002 "Criminalisation of Money Laundering" of the United Arab Emirates; and
 - iv. the Law Regulating Islamic Financial Business.
2. An Authorised Market Institution is also subject to the anti money laundering requirements in chapter 11.

Promotion and maintenance of standards

7.2.13 An Authorised Market Institution must be able and willing to:

- (a) promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities; and
- (b) co-operate with the DFSA or other appropriate regulatory authorities with regard to regulatory matters when required.

Guidance

1. In determining whether an Authorised Market Institution is able and willing to promote high standards of integrity and fair dealing, the DFSA will consider:
 - a. the extent to which an Authorised Market Institution seeks to promote and encourage such standards through its rules, procedures and practices;
 - b. the extent to which Members are required to, and do, adhere to such standards; and
 - c. any other applicable Rules and principles which apply to the carrying on of business on or through its facilities.
2. In assessing the ability and willingness of an Authorised Market Institution to co-operate with the DFSA and other regulatory authorities, the DFSA will consider:
 - a. the agreements in place between Persons granted access to the facilities and the relevant Authorised Market Institution for sharing information, such as information regarding large open positions; and
 - b. how diligently the Authorised Market Institution responds to enquiries from the DFSA or other regulatory authorities.

Whistleblowing

- 7.2.14** An Authorised Market Institution must have appropriate procedures and protections for allowing Employees to disclose any information to the DFSA or to other appropriate bodies involved in the prevention of Market Misconduct, financial crime or money laundering.

Clearing and settlement

- 7.2.15** (1) An Exchange must ensure that satisfactory arrangements are in place for securing the timely discharge of the rights and liabilities of the parties to transactions conducted on or through its facilities.
- (2) A Clearing House that conducts clearing services must ensure those services include satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions for which it provides such services.
- (3) A Clearing House that conducts settlement services must ensure those services include satisfactory arrangements for securing the timely discharge of settlement obligations of the parties to transactions for which it provides such services.

Guidance

In determining whether Rule 7.2.15 is satisfied, the DFSA will consider the Authorised Market Institution's:

- a. rules, procedures and practices relating to clearing and settlement;
- b. arrangements for matching trades and ensuring that the parties are in agreement about trade details;

- c. arrangements for making deliveries and payments and, where relevant, for collecting margin and holding collateral, in all relevant jurisdictions;
- d. procedures to detect and deal with the failure of settlement in accordance with its rules;
- e. arrangements for taking action to settle if settlement does not take place in accordance with its rules;
- f. arrangements for monitoring settlement performance; and
- g. default rules and default procedures.

Transaction recording

7.2.16 An Authorised Market Institution must ensure that satisfactory arrangements are made for:

- (a) recording the activity and transactions effected on or through its facilities;
- (b) maintaining the activity and transaction records for at least 6 years; and
- (c) providing the DFSA with these records in a timely manner if required by the DFSA.

Guidance

1. The type of information that requires recording will vary according to the activity and type of transactions conducted on or through the facilities of the Authorised Market Institution.
2. In general, for an Exchange, the type of information which should be recorded will include:
 - a. the name of the relevant Investment and the price, quantity and date of the transaction;
 - b. the order type, time of instruction and expiry date;
 - c. the identities and, where appropriate, the roles of the counterparties to the transaction;
 - d. the facilities on which the transaction was effected and is to be cleared and settled; and
 - e. the date and manner of settlement of the transaction.
3. In general, for a Clearing House, the type of information which should be recorded will include:
 - a. the name of the relevant Investment and the price, quantity and date of the transaction;
 - b. the identities and, where appropriate, the roles of the counterparties to the transaction;
 - c. the facilities on which the transaction was effected and is to be cleared;
 - d. (where applicable) time novation takes place; and

- e. the date and manner of settlement of the transaction.

Safeguarding and administration of assets

7.2.17 An Authorised Market Institution must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities:

- (a) satisfactory arrangements are made for that purpose; and
- (b) clear terms of agreement exist between the users of the facility and the Authorised Market Institution.

Guidance

In determining whether the Authorised Market Institution has made satisfactory arrangements for safeguarding and administering assets, the DFSA will consider:

- a. the terms of any agreement;
- b. the level of protection provided to users against the risk of theft, fraud, defalcation or other types of loss;
- c. whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owners of the assets or in accordance with the terms of the agreement and any applicable law;
- d. whether an investor's assets are adequately segregated from assets belonging to the Authorised Market Institution and other users of the facilities;
- e. the frequency of reconciliation between the assets and accounts which are being administered;
- f. whether the records kept of those assets and the operating of the safeguarding services provide sufficient accurate and timely information:
 - i. to identify the legal and beneficial owners of assets and of any persons who have charges over or other interests in the assets;
 - ii. to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and
 - iii. to identify separately the assets owned by (or where appropriate on behalf of) different persons, including, where appropriate, the assets owned by persons granted access to the facilities of an Authorised Market Institution and their clients.
- g. the frequency with which statements of their holdings are provided to users of the services, to the owners of assets held, and to other appropriate persons in accordance with the terms of agreement; and
- h. whether the arrangements include satisfactory procedures for the selection and oversight of any custodians or sub-custodians used in the safeguarding and administering of assets.

Business rules

- 7.2.18** An Authorised Market Institution must have clear and fair Business Rules which are legally enforceable against its Members, published and made freely available.

Guidance

The Business Rules should not include or approve any restrictive practices which may prevent effective competition for business in Securities.

Compliance with business rules

- 7.2.19** (1) An Authorised Market Institution must have compliance procedures in place to ensure:
- (a) its Business Rules are monitored and enforced;
 - (b) complaints regarding Persons granted access to its facilities are investigated;
 - (c) appeal procedures are in place; and
 - (d) where appropriate, disciplinary action resulting in financial and other types of penalties is available.
- (2) An Exchange must have arrangements for monitoring compliance with its Business Rules in relation to the provision of clearing and settlement services in respect of transactions effected by its facilities.

Guidance

1. In determining whether an Authorised Market Institution can effectively monitor its Business Rules, the DFSA will consider:
 - a. the oversight of activity conducted on its facilities;
 - b. the range of powers it retains over Persons granted access to its facilities, which should include the ability to modify, revoke or suspend access; and
 - c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.
2. In determining whether an Authorised Market Institution can effectively oversee the activities conducted on its facilities the DFSA will consider how non-compliance is identified and how the significance of any non-compliance is assessed.

Amendments to business rules

- 7.2.20** (1) Any amendment to an Authorised Market Institution's Business Rules must, prior to the amendment being effective, have been:
- (a) made available for a reasonable period of time to the market for consultation; and
 - (b) approved by the DFSA.

- (2) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with the requirement in (1)(a).

7.2.21 An Authorised Market Institution must have procedures for notifying the users of the amendments referred to in Rule 7.2.20.

Guidance

1. Amendments include the introduction of new Business Rules as well as changes to existing Business Rules.
2. Any consultation on Business Rules should include:
 - a. informal discussions at an early stage with users of the facilities and appropriate representative bodies;
 - b. publication of a formal consultation paper which includes clearly expressed reasons for the changes and an appropriately detailed assessment of the likely costs and benefits;
 - c. adequate time for users of its facilities to respond to the consultation paper and for the Authorised Market Institution to take responses properly into account;
 - d. adequate arrangements for making responses to the consultation available for inspection by users of its facilities unless the respondent requests otherwise;
 - e. adequate arrangements for ensuring that the Authorised Market Institution has proper regard to the comments received; and
 - f. publication, no later than the publication of the amended rules, of a reasoned account of the Authorised Market Institution's decision to amend its rules.
3. The DFSA expects that an Authorised Market Institution will submit proposed changes at least 28 days before the proposed effective date. Furthermore, when submitting amendments of the Business Rules to the DFSA, the Authorised Market Institution will need to:
 - a. set out the text of the amendment (including a marked-up version for comparison);
 - b. provide an explanation for the amendment; and
 - c. provide the DFSA with the proposed effective date.
4. In urgent cases, the DFSA may dispense with the requirement for market consultation but will still require the Authorised Market Institution to seek approval prior to making any amendment effective.

Default rules

7.2.22 An Authorised Market Institution must have default rules which in the event of a Member being, or appearing to be, unable to meet his obligations in respect of one or more contracts, enables action to be taken in respect of unsettled market contracts to which the Member is a party.

Guidance

The DFSA requires all Authorised Market Institutions to have default rules under Article 28 of the Markets Law. Default rules allow an Authorised Market Institution to close-out open positions by discharging the appropriate rights and liabilities of transactions which a person granted access to its facilities can not, or may not, be able to fulfil.

Complaints

- 7.2.23**
- (1) An Authorised Market Institution must have effective arrangements in place for the investigation and resolution of complaints made against it.
 - (2) An Authorised Market Institution must establish and maintain a register of complaints made against it and their resolution. Records of the complaints must be maintained for a minimum of six years.

Guidance

1. Procedures should be in place to acknowledge a complaint promptly, for making an objective consideration of the complaint and for a timely response to be sent to the complainant. The response should inform the complainant that, if he is not satisfied with the response, he should contact the DFSA.
2. Complaints should be fairly and impartially investigated by a person not involved in the conduct about which the complaint has been made. At the conclusion of the investigation a report should be prepared and provided to the relevant Key Individuals.

8 LISTING RULES

8.1 Application

- 8.1.1** (1) The requirements in this chapter apply, subject to (2), to an Authorised Market Institution which maintains or proposes to maintain its own Official List of Securities.
- (2) The requirement in Rule 8.3.1(1) applies to a Person who wishes to have Securities included in an Official List of Securities.

8.2 General requirements relating to listing rules

Prior approval of the DFSA

- 8.2.1** (1) An Authorised Market Institution wishing to admit Securities to its own Official List of Securities must:
- (a) have listing rules which meet the requirements in Rule 8.2.3; and
 - (b) ensure that its listing rules are approved by the DFSA.
- (2) Any amendment to an Authorised Market Institution's listing rules must, prior to the amendment becoming effective, have been:
- (a) made available for a reasonable period of time to the market for consultation; and
 - (b) approved by the DFSA.
- (3) In urgent cases, the DFSA may, on written application by the Authorised Market Institution, dispense with requirement in (2)(a).

Publication of listing rules

- 8.2.2** (1) An Authorised Market Institution must publish, and make freely available, its listing rules.
- (2) Where an Authorised Market Institution has made any amendments to its listing rules, it must have adequate procedures for notifying users of such amendments.

Content of listing rules

- 8.2.3** (1) The listing rules of an Authorised Market Institution must be clear, fair and legally enforceable and contain provisions dealing with:
- (a) procedures for admission of Securities to its Official List of Securities including;

- (i) requirements to be met before Securities may be granted admission to its Official List of Securities; and
 - (ii) agreements in connection with admitting Securities to its Official List of Securities;
 - (b) effective enforcement of the agreements referred to in (a)(ii);
 - (c) procedures for suspension and delisting of Securities from its Official List of Securities;
 - (d) the imposition on any Person of obligations to observe specific standards of conduct or to perform, or refrain from performing, specified acts, reasonably imposed in connection with the admission of Securities to its Official List of Securities or continued admission of Securities to its Official List of Securities;
 - (e) penalties or sanctions which may be imposed by an Authorised Market Institution or the DFSA for a breach of the listing rules;
 - (f) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the listing rules;
 - (g) actual or potential conflicts of interest that have arisen or might arise when a Person seeks to have Securities admitted to its Official List of Securities; and
 - (h) such other matters as are necessary or desirable for the proper operation of the listing rules and process.
- (2) Without prejudice to the requirements in (1), the listing rules of its Authorised Market Institution must also include, where appropriate to the type the Securities being admitted to its Official List of Securities, requirements in respect of:
- (a) an issuer's financial reporting and, in particular how regular reports are made and the international accounting standards to which they comply;
 - (b) auditing standards;
 - (c) an issuer's track record in terms of profit or operating history;
 - (d) the percentage of Securities in a class of Securities which can be considered as in free float;
 - (e) any restrictions that may exist on transferability; and
 - (f) any other matter deemed necessary by the DFSA.

8.2.4 An Authorised Market Institution must have adequate systems and controls to comply with the requirements that are applicable to it in respect of an Official List of Securities maintained by itself or by the DFSA for the purposes of trading of Securities using its facilities.

Compliance with listing rules

8.2.5 An Authorised Market Institution must have procedures in place to ensure that:

- (a) its listing rules are monitored and enforced; and
- (b) complaints regarding Persons subject to the listing rules are investigated.

8.2.6 An Authorised Market Institution must ensure that:

- (a) where appropriate, disciplinary action can be carried out and financial and other types of penalties can be imposed on Persons subject to the listing rules; and
- (b) appeal procedures are in place.

Guidance

In determining whether an Authorised Market Institution can effectively monitor its listing rules, the DFSA will consider amongst other things:

- a. the oversight of the Official List of Securities;
- b. the range of powers the Authorised Market Institution retains over Persons with Securities admitted to its Official List of Securities which should include the ability to suspend, restore from suspension and de-list Securities from the Official List of Securities in accordance with this module; and
- c. the disciplinary procedures which have been established to take disciplinary action, including a fair and clear policy on any financial penalties which may be imposed, and the appeal processes.

8.3 Admission to an Official List of Securities**Guidance**

1. The DFSA has the powers under Article 34 of the Markets Law 2012 in relation to the admission of Securities to an Official List of Securities maintained by an Authorised Market Institution. Under that Article the DFSA may:
 - a. object to an admission of Securities to an Official List of Securities; or
 - b. impose conditions or restrictions on an admission of Securities to an Official List of Securities .
2. Where the DFSA objects to an application for an admission of Securities to an Official List of Securities, the Authorised Market Institution is prohibited from admitting Securities to its Official List of Securities by virtue of Article 34 of the Markets Law 2012.
3. Where the DFSA does so, the applicant may make representations within fourteen days of the date of the notification. If representations are made, the DFSA shall provide a response and make any consequential variants or withdrawals without undue delay.

4. Pursuant to Article 36 of the Markets Law 2012, the Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision by the DFSA to object or impose conditions or restrictions upon an admittance of Securities to an Official List of Securities.
 5. The DFSA expects to exercise these powers rarely. An Authorised Market Institution is responsible for assessing applications to its Official List of Securities. This section sets out the process for dealing with applications for admission.
- 8.3.1**
- (1) Applications for the admission of Securities to an Official List of Securities must be made by the issuer of the Securities, or by a third party on behalf of and with the consent of the issuer of the Securities.
 - (2) An Authorised Market Institution must, before granting admission of any Securities to an Official List of Securities maintained by it:
 - (a) be satisfied that the applicable requirements including those in its listing rules have been or will be fully complied with in respect of those Securities; and
 - (b) comply with the requirements relating to notification to the DFSA in Rule 8.3.2(1).
 - (3) An Authorised Market Institution must notify an applicant in writing of its decision in relation to the application for admission of Securities to an Official List of Securities.
- 8.3.2**
- (1) Subject to (2), at least 5 business days prior to an admission of Securities to an Official List of Securities, an Authorised Market Institution must provide the DFSA with notice of the decision and include the following information in the notification:
 - (a) a copy of the listing application;
 - (b) a copy of the assessment of the listing application carried out by the Authorised Market Institution; and
 - (c) any information requested by the DFSA.
 - (2) An Authorised Market Institution must immediately notify the DFSA of any decision to suspend, restore from suspension or de-list any Securities from its Official List of Securities and the reasons for the decision.

9. ONGOING OBLIGATIONS OF AN AUTHORISED MARKET INSTITUTION

9.1 Application

9.1.1 This chapter applies to an Authorised Market Institution.

9.2 General obligations

9.2.1 An Exchange must at all times do all things necessary to ensure that its market is fair, orderly and efficient.

9.2.2 A Clearing House must at all times do all things necessary to ensure that its facilities are operated in a fair and efficient way and which reduces systemic risk.

9.3 Reports

9.3.1 For the purposes of Article 74(2) of the Regulatory Law 2004, an Authorised Market Institution must deliver to the DFSA a report in writing at such times as the DFSA may direct addressing those matters contained in Article 74(2)(a)-(d) of the Regulatory Law 2004 and such other matters as the DFSA may reasonably require.

10 SUPERVISION OF AUTHORISED MARKET INSTITUTIONS

10.1 Application

10.1.1 This chapter applies to an Authorised Market Institution.

10.2 Relations with regulators and the risk based approach

10.2.1 An Authorised Market Institution must deal with regulatory authorities in an open and co-operative manner and keep the DFSA promptly informed of significant events or activities, wherever they are carried on relating to the Authorised Market Institution of which the DFSA would reasonably expect to be notified.

10.2.2 An Authorised Market Institution must advise the DFSA immediately it becomes aware, or has reasonable grounds to believe, that a significant breach of a Rule of Licensing Requirement by the Authorised Market Institution or any of its Employees may have occurred or may be about to occur.

10.3 Notifications

Guidance

An Authorised Market Institution must make notifications as required by SUP 7. This section requires additional notifications to be made. The additional notifications required by this section are specific to Authorised Market Institutions rather than the more general notifications contained elsewhere. The notifications are not exhaustive and an Authorised Market Institution should consider the requirements imposed upon it by Rule 10.2.2.

10.3.1 Unless otherwise provided, notifications in this section may be made orally or in writing, whichever is more appropriate in the circumstances, but where the Authorised Market Institution gives notice or information orally, it must confirm that notice or information in writing without delay.

10.4 Key individuals and regulatory functions

10.4.1 Where an individual becomes or ceases to be a Key Individual of an Authorised Market Institution, that Authorised Market Institution must immediately give written notice to the DFSA of that event setting out the following information:

- (a) where an individual has been appointed or elected as a Key Individual:
 - (i) that individual's name;
 - (ii) his date of birth;

- (iii) a description of the responsibilities which he will have in the position to which he has been appointed or elected;
- (iv) the relevant experience and qualifications of the individual; or
- (b) where an individual has resigned as or otherwise ceased to be a Key Individual, that individual's name and the date of resignation or other form of cessation.

Guidance

The DFSA does not need to be notified where minor changes are made to the responsibilities of a Key Individual, but where major changes in responsibilities are made which amount to a new appointment or a significant re-alignment of responsibilities, then the DFSA should be notified with the appropriate information.

Disciplinary action and events relating to key individuals or directors**10.4.2** Where any Key Individual or Director of an Authorised Market Institution:

- (a) is the subject of any:
 - (i) disciplinary action arising out of alleged misconduct; or
 - (ii) criminal prosecution arising out of alleged misconduct involving fraud or dishonesty;
- (b) resigns as a result of an investigation into alleged misconduct; or
- (c) is dismissed for misconduct;

the Authorised Market Institution must immediately give the DFSA notice of that event and give the following information:

- (d) the name of the Key Individual or Director and his responsibilities within the Authorised Market Institution;
- (e) details of the alleged acts of misconduct by that Key Individual or Director; and
- (f) details of any disciplinary action which has been imposed or is proposed to be taken by that body in relation to that Key Individual or Director.

10.4.3 Where an Authorised Market Institution becomes aware that any of the following events have occurred in relation to a Key Individual or Director, it must immediately give the DFSA notice of that event:

- (a) a petition of bankruptcy is presented against that Key Individual or Director;
- (b) a bankruptcy order is made against him; and
- (c) he enters into a voluntary arrangement with his creditors.

10.5 Constitution and governance

10.5.1 Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association, or other document relating to its constitution, to:

- (a) its shareholders or any group or class of them;
- (b) persons granted access to its facilities or any group or class of them; or
- (c) any other group or class of persons which has the power to make that amendment or whole consent or approval is required before it may be made:

that Authorised Market Institution must give notice of that proposed amendment to the DFSA setting out the following information:

- (d) the proposed amendment;
- (e) the reasons for the proposal; and
- (f) a description of the group or class of persons to whom the proposal is to be circulated.

10.5.2 Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution, that Authorised Market Institution must immediately give the DFSA notice of that event, setting out written particulars of that amendment and of the date on which it is to become or became effective.

10.5.3 (1) Where any significant change is made to an agreement which relates to the constitution, or to the corporate governance framework or the remuneration structure or strategy, of an Authorised Market Institution, that Authorised Market Institution must give the DFSA a notice as provided in (2).

(2) Where any significant change is made to:

- (a) an agreement which relates to the constitution of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as it becomes aware of it, and the date on which it is to become or became effective; or
- (b) the corporate governance framework or the remuneration structure or strategy of an Authorised Market Institution, the Authorised Market Institution must give the DFSA notice of that change as soon as practicable before making such a change.

Guidance

1. The purpose of these notifications is to ensure the DFSA is informed of changes to arrangements which specify the arrangements by which an Authorised Market Institution will be governed or by which important decisions will be taken within that body.

2. Key aspects of the corporate governance framework of an Authorised Market Institution encompasses a range of matters. These include the composition of its Governing Body, any committees of the Governing Body, the senior management and the Persons Undertaking Key Control Functions, the reporting lines between the Governing Body, senior management and the Persons Undertaking Key Control Functions and any key policies and practices relating to the internal governance of the firm, such as codes of ethics or its remuneration practices. Significant changes relating to such arrangements and policies need to be notified to the DFSA pursuant to Rule 10.5.3(2)(b) before making any changes.
3. Notification relating to proposed changes to corporate governance and remuneration referred to in Rule 10.5.3(2)(b) must be given sufficiently in advance of effecting the proposed change. If there are any concerns that an Authorised Market Institution may not be able to meet the applicable requirements relating to corporate governance and remuneration set out in GEN Rules 5.3.30 and 5.3.31 as a result of a proposed change, the DFSA may require the Authorised Market Institution to address those concerns effectively before implementing such a change.

10.6 Financial and other information

10.6.1 An Authorised Market Institution must give the DFSA:

- (a) a copy of its annual report and accounts; and
- (b) a copy of any consolidated annual report and accounts of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

- (c) three months after the end of the financial year to which the document relates;
- (d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or
- (e) the time when the document is sent to a Holding Company of the Authorised Market Institution.

10.6.2 Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any Regulatory Functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the DFSA a copy of that report.

10.6.3 An Authorised Market Institution must give the DFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

10.6.4 An Authorised Market Institution must give the DFSA:

- (a) a statement of its anticipated income, expenditure and cash flow for each financial year; and
- (b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

Guidance

An Authorised Market Institution is subject to GEN 8 and the requirements imposed by those Rules.

Fees and charges

10.6.5 An Authorised Market Institution must give the DFSA a summary of:

- (a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and
- (b) any such change, no later than the date when it is published and notified to relevant parties.

10.7 Complaints

10.7.1 Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform any of its Regulatory Functions, and the conclusion is that the Authorised Market Institution should:

- (a) make a compensatory payment to any person; or
- (b) remedy the matter which was the subject of that complaint

the Authorised Market Institution must immediately notify the DFSA of that event and give the DFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

10.8 Notifications

Notification in respect of trading

10.8.1 Where an Authorised Market Institution proposes to remove from trading or admit to trading, by means of its facilities a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholder, with the following information;

- (a) a description of the Investment to which the proposal relates;
- (b) where that Investment is a derivative product, the proposed terms of that derivative; and

(c) the name of any clearing or settlement facility in respect of that Investment.

10.8.2 Where an Authorised Market Institution decides to suspend, restore from suspension or cease trading any Investment it must immediately notify the DFSA and any person granted access to its facilities of the decision.

10.8.3 Where a Clearing House proposes to cease clearing or settling, or to clear or settle by means of its facilities a class of Investment which it has not previously traded, but is licensed to do so, it must give the DFSA notice of that event, at the same time as the proposal is communicated to persons granted access to its facilities or shareholder, with the following information;

- (a) a description of the Investment to which the proposal relates;
- (b) where that Investment is a derivative product, the proposed terms of that derivative; and
- (c) the name of any trading facility in respect of that Investment.

Delisting or suspension of Securities by an Authorised Market Institution

Guidance

An Authorised Market Institution has the power under Article 35(1) of the Markets Law 2012 to delist or suspend Securities from its Official List of Securities.

10.8.4 Where an Authorised Market Institution delists, suspends or restores from suspension any Securities on its Official List of Securities, it must immediately notify the DFSA of its decision and the reasons for the decision.

10.9 Information technology systems

10.9.1 Where an Authorised Market Institution changes any of its plans for action in response to a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the DFSA notice of that event, and a copy of the revised or new plan.

10.9.2 Where any reserve information technology system of an Authorised Market Institution fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the DFSA notice of that event, and inform the DFSA of:

- (a) what action that Authorised Market Institution is taking to restore the operation of the reserve information technology system; and
- (b) when it is expected that the operation of that system will be restored.

Inability to discharge regulatory functions

10.9.3 Where, because of the occurrence of any event or circumstances, an Authorised Market Institution is unable to discharge any Regulatory Function, it

must immediately give the DFSA written notice of its inability to discharge that function, and inform the DFSA of:

- (a) what event or circumstance has caused it to become unable to do so;
- (b) which of its Regulatory Functions it is unable to discharge; and
- (c) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that Regulatory Function.

10.10 Investigations and disciplinary action

10.10.1 Where an Authorised Market Institution becomes aware that a person other than the DFSA has been appointed by any regulatory authority to investigate:

- (a) any business transacted on or through its facilities; or
- (b) any aspect of the clearing or settlement services which it provides,

it must immediately give the DFSA notice of that event.

Guidance

An Authorised Market Institution need not give the DFSA notice of:

- a. routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of theme visits;
- b. routine requests for information; or
- c. investigations into the conduct of Persons granted access to the facilities of an Authorised Market Institution where the use of its facilities is a small or incidental part of the subject matter of the investigation.

Disciplinary action relating to persons granted access to its facilities

10.10.2 Where an Authorised Market Institution has taken disciplinary action against a Person granted access to its facilities, or any Employee of such Person, in respect of a breach of its Business Rules or Listing Rules the Authorised Market Institution must immediately notify the DFSA of that event, and give:

- (a) the name of the Person concerned;
- (b) details of the disciplinary action taken by the Authorised Market Institution; and
- (c) the Authorised Market Institution's reasons for taking that disciplinary action.

10.10.3 Where an appeal is lodged against any disciplinary action referred to in Rule 10.10.2, the Authorised Market Institution must immediately give the DFSA notice of that event and:

- (a) the name of the appellant and the grounds on which the appeal is based, immediately; and
- (b) the outcome of the appeal, when known.

Criminal offences and civil prohibition

10.10.4 Where an Authorised Market Institution has information tending to suggest that any person has:

- (a) been carrying on Financial Services in the DIFC in contravention of the general prohibition;
- (b) engaged in Market Misconduct; or
- (c) engaged in financial crime or money laundering;

it must immediately give the DFSA notice of that event, along with full details of that information in writing.

Directions by an Authorised Market Institution

10.10.5 Where an Authorised Market Institution:

- (a) decides to limit the open position of any Person in Investments; or
- (b) issues directions to any Person to close out his position in any Investment;

that Authorised Market Institution must immediately give the DFSA notice of that event, and the Person's name, the Investment and size of any position to be limited or closed-out and the reasons for the Authorised Market Institution's decision.

10.11 Supervisory directions

Guidance

1. Article 26 of the Markets Law provides as follows:

“(1) Without limiting the application of the Regulatory Law 2004, the DFSA may by written notice direct an Authorised Market Institution to do or not do specified things that the DFSA considers are necessary or desirable to comply with the Law or ensure the integrity of the financial services industry in the DIFC, including but not limited to directions:

- (a) requiring compliance with any duty, requirement, prohibition, obligation or responsibility applicable to an Authorised Market Institution;
- (b) requiring an Authorised Market Institution to act in a specified manner in relation to transactions conducted on or through the facilities operated by an Authorised Market Institution, or in relation to a specified class of transactions; or

- (c) requiring an Authorised Market Institution to act in a specified manner or to exercise its powers under any rules that the Authorised Market Institution has made.
 - (2) Without limiting the application of Article 75 of the Regulatory Law 2004, the DFSA may, by written notice direct an Authorised Market Institution to:
 - (a) close the market or facilities operated by an Authorised Market Institution in a particular manner or for a specified period;
 - (b) suspend transactions on the market or through the facilities operated by an Authorised Market Institution;
 - (c) suspend transactions in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
 - (d) prohibit trading in Investments conducted on the market or through the facilities operated by an Authorised Market Institution;
 - (e) defer for a specified period the completion date of transactions conducted on the market or through the facilities operated by an Authorised Market Institution;
 - (f) prohibit a specified person from undertaking any transactions on the facilities operated by the Authorised Market Institution; or
 - (g) do any act or thing, or not do any act or thing, in order to ensure an orderly market, or reduce risk to the DFSA's objectives.
 - (3) The Regulatory Appeals Committee has jurisdiction to hear and determine any appeal in relation to a decision to issue a direction under Article 26.
2. The DFSA expects to use these powers only in exceptional circumstances. Factors the DFSA will consider in exercising these powers include:
- a. what steps the Authorised Market Institution has taken or is taking in respect of the issue being addressed in the planned direction;
 - b. the impact on the DFSA's objectives if a direction were not issued; or
 - c. whether it is in the interests of the DIFC.
3. The written notice given by the DFSA will specify what an Authorised Market Institution is required to do under the exercise of such powers. Though the DFSA is not required to do so under the Markets Law, in most cases, the DFSA will contact the Authorised Market Institution prior to issuing such a direction.

10.12 Listing directions

Guidance

Article 35(2) of the Markets Law 2012 allows the DFSA to direct an Authorised Market Institution to suspend or delist from or restore from suspension to Securities from its Official List of Securities. Such directions may take immediate effect or from a date and time as may be specified in the directive.

10.13 Public disclosures of decisions in relation to an Official List of Securities

- 10.13.1** (1) An Authorised Market Institution must make a market disclosure:
- (a) on the website of the Authorised Market Institution; and
 - (b) to the DFSA,
- of decisions in relation to the following events:
- (c) an admission of Securities to an Official List of Securities,
 - (d) a suspension of Securities from an Official List of Securities;
 - (e) a restoration from suspension of Securities from an Official List of Securities;
 - (f) a delisting of Securities from an Official List of Securities; and
 - (g) a suspension, restoration from suspension or decision to cease trading of any Investment.
- (2) The disclosure made in accordance with (1) should also indicate whether the event was made under a direction made to the Authorised Market Institution by the DFSA.

Guidance

Disclosures made in accordance with Rule 10.13.1 are designed to help ensure that an orderly market exists in relation to Securities admitted to an Official List of Securities.

11 ANTI MONEY LAUNDERING RULES FOR AUTHORISED MARKET INSTITUTIONS

11.1 U.A.E. federal law

Guidance

1. In connection with Article 72 of the Regulatory Law 2004, this chapter relates to regulatory requirements imposed by the DFSA, as opposed to requirements imposed by applicable criminal laws, that is relevant provisions of the 'Federal Law No 4. of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti terrorism, the U.A.E. Penal Code and any other federal law of the U.A.E as applicable in the DIFC in relation to anti money laundering compliance. The Rules of the chapter should therefore not be relied upon to interpret or determine the application of the money laundering laws of the U.A.E.
2. By virtue of Article 3(1) of 'Federal Law No. 8 of 2004', the U.A.E. Law No. 4 of 2002 applies to all operations in the DIFC. In recognition of this, Article 70(3) of the Regulatory Law requires an Authorised Market Institution to comply with the U.A.E. Law No. 4. Pursuant to Article 70(3), an Authorised Market Institution is required to comply with the U.A.E. Law No. 4. The defined term of 'Money Laundering' in these Rules follows that in the U.A.E. Law No.4. The legal definition of the offence of 'Money Laundering' is set out in Article 1 of the U.A.E. Law No.4.

11.2 Application

- 11.2.1** This chapter applies to every Authorised Market Institution and the Money Laundering Reporting Officer (MLRO) of an Authorised Market Institution.

Guidance

The requirement for the appointment of an MLRO of an Authorised Market Institution is set out in Rule 7.2.2(2)(c).

11.3 Purpose

Guidance

1. These Rules require an Authorised Market Institution to have adequate policies, procedures, systems and controls in place to prevent the activity of money laundering. Money laundering is generally described as the process by which criminals attempt to hide or disguise the true origin and ownership of the proceeds of their criminal activities, thereby avoiding prosecution, conviction and confiscation of criminal funds. This includes the closely related subject of 'terrorist financing'.
2. Accordingly, where the DFSA uses 'money laundering' either as a defined or undefined term, Authorised Market Institutions are required to include 'terrorist financing' in all considerations with regard to their policies, procedures, systems and controls.

11.4 General requirements

- 11.4.1** (1) An Authorised Market Institution must establish and maintain effective anti money laundering policies, procedures, systems and controls to prevent opportunities for Money Laundering, in relation to the Authorised Market Institution, and its activities in relation to its Members.
- (2) An Authorised Market Institution must take reasonable steps to ensure that its Employees comply with the relevant requirements of its anti money laundering policies, procedures, systems and controls.

Guidance

1. An Authorised Market Institution's anti money laundering policies, procedures, systems and controls should:
 - a. ensure compliance with the U.A.E Law No.4 and any other relevant Federal laws;
 - b. enable suspicious transactions to be detected and reported;
 - c. ensure the Authorised Market Institution is able to provide an audit trail of a transaction; and
 - d. comply with any other obligation in these Rules.
2. An Authorised Market Institution's anti money laundering compliance arrangements should consist of policies, procedures, systems and controls and may also encompass appropriate anti money laundering programmes and strategies.
3. An Authorised Market Institution should have a policy statement detailing the duties and obligations of its MLRO.
4. In accordance with GEN Rule 5.3.19 an Authorised Market Institution should have specific arrangements to consider the fitness and propriety of its staff. The arrangements should take into account criminal convictions, adverse findings by courts or regulatory authorities in the U.A.E. or elsewhere, or engagement in dishonest or improper business practices.
5. Under Article 3 of the U.A.E. Law No.4, an Authorised Market Institution may be criminally liable for the offence of Money Laundering if such an activity is intentionally committed in its names or for its accounts.

- 11.4.2** (1) An Authorised Market Institution must include in its Business Rules an anti money laundering regime applicable to its Members.
- (2) The anti money laundering regime referred to in (1) must include at least rules in relation to:
- (a) application of the 'Federal Law No. 4 of 2002 - Criminalisation of Money Laundering of the U.A.E.' (U.A.E. Law No. 4), the 'Federal Law No. 1 of 2004' regarding anti-terrorism and the U.A.E. Penal Code;
 - (b) anti money laundering compliance arrangements;
 - (c) appointment of an MLRO;

- (d) customer identification, ongoing due diligence and scrutiny required under Rule 11.7.3, and retention of documents;
 - (e) internal and external reporting of suspicious transactions, taking into account the applicable anti money laundering legislation;
 - (f) transaction monitoring;
 - (g) use of government, regulatory and international findings with regard to anti money laundering deficiencies in specific jurisdictions and with regard to money laundering and terror suspects;
 - (h) risk assessment; and
 - (i) training.
- (3) An Authorised Market Institution must monitor and regularly review compliance of its Members with its anti money laundering regime.
- (4) An Authorised Market Institution must ensure that its Members rectify any contraventions of its anti money laundering regime without delay.
- (5) An Authorised Market Institution must notify the DFSA of any:
- (a) material breach of its anti money laundering regime by a Member;
 - (b) circumstances in which a Member will not or cannot rectify a breach of its anti money laundering regime; and
 - (c) conduct which the Authorised Market Institution knows or ought reasonably to know amounts to terrorist financing.

Guidance

1. In accordance with the Regulatory Law, the DFSA is responsible for monitoring anti money laundering compliance of Authorised Market Institutions. An Authorised Market Institution is responsible for anti money laundering compliance of all its Members with its anti money laundering regime. Authorised Firms must also comply with the DFSA's AML module.
2. An Authorised Market Institution must operate appropriate measures to reduce Market Misconduct on the Authorised Market Institution's facilities. As part of this requirement, an Authorised Market Institution shall include an anti money laundering regime in their Business Rules.
3. An Authorised Market Institution may review the operation of its Members' anti money laundering policies, procedures, systems and controls in its regular reviews of Members' operations.
4. Before an Authorised Market Institution accepts a prospective Member, it should ensure that the applicant has an anti money laundering programme in place which is designed to comply with all applicable anti money laundering legislation.

11.5 Co-operation with regulators

- 11.5.1** An Authorised Market Institution that receives a request for information from a Financial Services Regulator or agency responsible for anti money laundering regarding enquiries into potential money laundering related to activities carried on in or from the DIFC, must promptly inform the DFSA in writing.

11.6 Appointment, responsibilities and duties of the MLRO

Appointment

Guidance

1. The requirement to appoint an individual as MLRO is contained in Rule 7.2.2(2)(c).
2. Pursuant to Rule 7.2.2(2)(c), the MLRO must be ordinarily resident in the U.A.E.

- 11.6.1** An Authorised Market Institution must ensure that the MLRO is of sufficient seniority within the Authorised Market Institution to enable him to:

- (a) act on his own authority;
- (b) have direct access to the Governing Body and senior management;
- (c) have sufficient resources including, if necessary, an appropriate number of appropriately trained Employees to assist in the performance of his duties in an effective, objective and independent manner;
- (d) have unrestricted access to information the Authorised Market Institution has about the financial and business circumstances of a Member; and
- (e) have unrestricted access to relevant information about the features of the transactions relevant to the Authorised Market Institution.

Guidance

GEN Rule 5.3.18 requires an Authorised Market Institution to establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

Responsibilities

- 11.6.2**
- (1) An Authorised Market Institution must ensure that its MLRO is responsible for all of its anti money laundering activities carried on in or from the DIFC.
 - (2) An Authorised Market Institution must ensure that its MLRO carries out and is responsible for the following:
 - (a) establishing and maintaining the Authorised Market Institution's anti money laundering policies, procedures, systems and controls and compliance with anti money laundering legislation applicable in the DIFC;

- (b) the day-to-day operations for compliance with the Authorised Market Institution's anti money laundering policies, procedures, systems and controls;
- (c) the compliance monitoring and review of its Member's anti money laundering policies, procedures, systems and controls with the Authorised Market Institution's anti money laundering regime pursuant to Rule 11.4.2;
- (d) taking appropriate action pursuant to Rule 11.4.2(3) in order to ensure that contraventions of its Members are rectified without delay;
- (e) acting as the point of contact to receive internal Suspicious Transaction Reports from the Authorised Market Institution's Employees pursuant to Rule 11.8.1;
- (f) taking appropriate action pursuant to Rule 11.8.2 following the receipt of an internal Suspicious Transaction Report from the Authorised Market Institution's Employees;
- (g) making, in accordance with U.A.E. Law No.4, external Suspicious Transaction Reports to the Anti Money Laundering Suspicious Cases Unit (AMLSCU) of the U.A.E. and sending corresponding copies to the DFSA under Rule 11.8.2;
- (h) acting as the point of contact within the Authorised Market Institution for competent U.A.E. authorities, the DFSA and its Members regarding money laundering issues;
- (i) responding promptly to any request for information made by competent U.A.E. authorities or the DFSA;
- (j) establishing and maintaining an appropriate anti money laundering training programme and adequate awareness arrangements pursuant to Rules under section 11.12; and
- (k) receiving and acting upon any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions, described in section 11.9 and GEN Rule 5.3.30.

Guidance

In accordance with GEN Rule 5.3.21 where an Authorised Market Institution outsources specific anti money laundering tasks of its MLRO to another suitable individual of a third party provider, including within a corporate Group, the MLRO of the Authorised Market Institution remains responsible for ensuring compliance with the duties imposed on the MLRO.

Reporting

11.6.3 The MLRO must report at least annually to the Governing Body or senior management of the Authorised Market Institution on the following matters:

- (a) the Authorised Market Institution's compliance with applicable anti money laundering laws including Rules;
- (b) the quality of the Authorised Market Institution's anti money laundering policies, procedures, systems and controls;
- (c) the general compliance of its Members with the anti money laundering regime contained in the Business Rules;
- (d) any internal Suspicious Transaction Reports made by the Authorised Market Institution's Employees pursuant to Rule 11.8.1 and action taken in respect of those reports, including the grounds for all decisions;
- (e) any external Suspicious Transaction Reports made by the Authorised Market Institution pursuant to Rule 11.8.2 and action taken in respect of those reports including the grounds for all decisions;
- (f) any external Suspicious Transaction Reports made by the Authorised Market Institution's Members to the AMLSCU;
- (g) any relevant findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30 and how the Authorised Market Institution has taken them into account; and
- (h) any other relevant matters related to money laundering as it concerns the Authorised Market Institution's business.

11.6.4 An Authorised Market Institution must ensure that its Governing Body or senior management promptly:

- (a) assess the report provided under Rule 11.6.3;
- (b) take action, as required subsequent to the findings of the report, in order to resolve any identified deficiencies; and
- (c) make a record of their assessment in (a) and the action taken in (b).

11.6.5 (1) The report provided under Rule 11.6.3 and the records of the assessment and actions pursuant to Rule 11.6.4 must be documented in writing.

- (2) A complete copy of the Report and records of the assessment and actions must be provided to the DFSA promptly.

11.7 Member identification requirements

Duties and responsibilities

- 11.7.1** (1) Subject to the exception under Rule 11.7.4, an Authorised Market Institution must establish and verify the identity of any Member to whom the Authorised Market Institution allows access or proposes to allow access to its facilities.
- (2) In establishing and verifying a Member's true identity, an Authorised Market Institution must obtain sufficient and satisfactory evidence having considered:
- (a) its risk assessment under Rule 11.10.1 in respect of the Member; and
 - (b) the relevant provisions of App2 and App3.
- (3) An Authorised Market Institution must update as appropriate any Member identification policies, procedures, systems and controls.

Guidance

1. An Authorised Market Institution should adopt a risk-based approach for the Member identification and verification process. Depending on the outcome of the Authorised Market Institution's money laundering risk assessment of its Member, it should decide to what level of detail the Member identification and verification process will need to be performed.
2. The requirements for Members on how to identify and verify their clients should be set out in the Authorised Market Institution's anti money laundering regime.

11.7.2 The obligations under Rules 11.7.1 must be fulfilled before the Authorised Market Institution effects any transaction on behalf of the Member.

- 11.7.3** (1) An Authorised Market Institution must :
- (a) ensure that the information and documentation concerning a Member's identity remains accurate and up-to-date ; and
 - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of transactions undertaken by, a Member throughout the course of the relationship.
- (2) If at any time an Authorised Market Institution becomes aware that it lacks sufficient information or documentation concerning a Member's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the Member's identity.

Guidance

1. An Authorised Market Institution should undertake a periodic review to ensure that Member identity documentation is accurate and up-to-date.
2. An Authorised Market Institution should undertake a review particularly when there is a material change in the nature or ownership of the Member.
3. Additional elements concerning the Member identification and ongoing due diligence of the business relationship with the Member and scrutiny of transactions which an Authorised Market Institution should take into account are set out as further Guidance in App2.
4. The degree of the ongoing due diligence to be undertaken will depend on the risk assessment carried out pursuant to section 11.10.

Exception to member identification requirements

- 11.7.4** (1) Subject to Rule 11.7.5, an Authorised Market Institution is not required to establish the identity of a Member pursuant to Rule 11.7.1 if the Member is one of the following:
- (a) an Authorised Firm; or
 - (b) a Recognised Member whose identity has been verified in a manner consistent with these Rules or equivalent international standards applying in FATF Countries, provided that:
 - (i) no exception from identification obligations has been applied in the original identification process; and
 - (ii) a written statement is received from the introducing exchange or clearing house confirming that the Recognised Member has been identified with the relevant standards under (b)(i); any identification evidence can be accessed by the Authorised Market Institution without delay; and the identification evidence is kept for at least six years or any other period acceptable to the DFSA.
- (2) If an Authorised Market Institution is not satisfied that the Recognised Member has been identified in a manner consistent with these Rules, the Authorised Market Institution must perform the verification process itself.

Guidance

The DFSA would expect an Authorised Market Institution to take reasonable steps to determine whether or not a Member falls within the exceptions under this Rule, and to keep records of the basis on which a Member's identity was not required to be verified.

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- 11.7.5** (1) Rule 11.7.4 does not apply where the Authorised Market Institution:
- (a) knows or suspects; or
 - (b) has reasonable grounds to know or suspect;
- that a Member is engaged in Money Laundering.
- (2) The Authorised Market Institution will be taken to know or suspect or to have reasonable grounds to know or suspect, if:
- (a) any Employee handling the transaction or potential transaction; or
 - (b) anyone managerially responsible for it;
- knows or suspects or has reasonable grounds to know or suspect that a Member is engaged in Money Laundering.

Documentation and records

- 11.7.6** (1) All relevant information, correspondence and documentation used by an Authorised Market Institution:
- (a) to verify a Member's identity pursuant to Rules 11.7.1; and
 - (b) in respect of the ongoing due diligence and scrutiny required under Rule 11.7.3,
- must be kept for at least six years from the date on which the business relationship with a Member has ended.
- (2) If the date on which the business relationship with a Member has ended remains unclear, it may be taken to have ended on the date of the completion of the last transaction.

Guidance

The records maintained by an Authorised Market Institution should be kept in such a manner that:

- a. the DFSA or another competent third party is able to assess the Authorised Market Institution's compliance with legislation applicable in the DIFC;
- b. any transaction which was processed by or through the Authorised Market Institution on behalf of a Member can be reconstructed;
- c. any Member can be identified;
- d. all internal and external Suspicious Transaction Reports can be identified; and
- e. the Authorised Market Institution can satisfy, within an appropriate time, any regulatory enquiry or court order to disclose information.

- 11.7.7** All relevant details of any transaction carried out by the Authorised Market Institution with or for a Member must be kept for at least six years from the date on which the transaction was completed.

- 11.7.8** (1) Where Member identification records are kept by the Authorised Market Institution or other Persons outside the U.A.E., an Authorised Market Institution must take reasonable steps to ensure that the records are held in a manner consistent with these Rules.
- (2) An Authorised Market Institution must verify if there are secrecy or data protection legislation that would restrict access without delay to such data by the Authorised Market Institution, the DFSA or the law enforcement agencies of the U.A.E. Where such legislation exists, the Authorised Market Institution must obtain without delay certified copies of the relevant identification evidence and keep these copies in a jurisdiction which allows access by all those Persons.

11.7.9 An Authorised Market Institution must not:

- (a) establish a correspondent banking relationship with a Shell Bank;
- (b) establish or keep anonymous accounts or accounts in false names; or
- (c) maintain a nominee account which is held in the name of one Person, but controlled by or held for the benefit of another Person whose identity has not been disclosed to the Authorised Market Institution.

Guidance

An Authorised Market Institution should also have arrangements to guard against establishing a business relationship with business partners who permit their accounts to be used by Shell Banks.

11.8 Internal and external reporting requirements

- 11.8.1** (1) An Authorised Market Institution must have appropriate arrangements to ensure that whenever any Employee, acting in the ordinary course of his employment, either:
- (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting;
- that a Person is engaged in Money Laundering, that Employee makes an internal Suspicious Transaction Report to the Authorised Market Institution's MLRO.
- (2) An Authorised Market Institution must have policies and procedures to ensure that disciplinary action can be taken against any Employee who fails to make such a report.

Guidance

The requirement for Employees to make an internal Suspicious Transaction Report should include situations when no business relationship was developed because the circumstances were suspicious.

11.8.2 If an Authorised Market Institution's MLRO receives an internal Suspicious Transaction Report he must without delay:

- (a) investigate the circumstances in relation to which the report was made;
- (b) determine whether in accordance with U.A.E Law No.4 of 2002 a corresponding external Suspicious Transaction Report must be made to the AMLSCU;
- (c) if required, make such an external report to the AMLSCU; and
- (d) provide a copy of such an external report to the DFSA at the time of provision under U.A.E Law No.4 of 2002.

Guidance

1. An Authorised Market Institution may allow its Employees to consult with their line managers before sending a report to the MLRO. The DFSA would expect that such consultation does not prevent making a report whenever an Employee has stated that he has knowledge, suspicion or reasonable grounds for knowing or suspecting that a transaction may involve money laundering.
2. Authorised Market Institutions are reminded that the failure to report suspicions of Money Laundering may constitute a criminal offence that is punishable under the laws of the U.A.E.
3. External Suspicious Transaction Reports under U.A.E. Law No.4 should be faxed to the AMLSCU and a copy faxed to the DFSA. The dedicated fax numbers and the template for making Suspicious Transaction Reports are available on the DFSA website.

11.8.3 The MLRO must document:

- (a) the steps taken to investigate the circumstances in relation to which an internal Suspicious Transaction Report is made; and
- (b) where no external Suspicious Transaction Report is made to the AMLSCU the reasons why no such report was made.

11.8.4 All relevant details of any internal and external Suspicious Transaction Report pursuant to Rules 11.8.1 and 11.8.2 must be kept for at least six years from the date on which the report was made.

11.8.5 An Authorised Market Institution must ensure that if the MLRO decides to make an external Suspicious Transaction Report in accordance with Rule 11.8.2, his decision is made independently and is not subject to the consent or approval of any other Person.

11.8.6 Authorised Market Institutions must not carry out transactions which they know or suspect or have reasonable grounds for knowing or suspecting to be related to Money Laundering until they have informed the AMLSCU and the DFSA pursuant to Rule 11.8.2.

Guidance

1. If the Authorised Market Institution has reported a suspicion to the AMLSCU, the AMLSCU may instruct an Authorised Market Institution on how to proceed with the transaction. If a Person expresses his wish to move the funds before an Authorised

Market Institution receives instruction from the AMLSCU on how to proceed, the Authorised Market Institution should immediately contact the AMLSCU for further instructions.

2. Pursuant to Article 4 of the U.A.E. Law No.4:
 - a. the Central Bank of the U.A.E. may order the freezing of suspected Property for a maximum of seven days;
 - b. the public prosecutor office of the U.A.E. may order seizure of suspected Property, proceeds or instrumentalities; or
 - c. a competent court of the U.A.E. may order provisional attachment for undetermined periods on any Property, proceeds or instrumentalities, if they have resulted from, or are associated with, a Money Laundering offence.
3. Further, and pursuant to Article 4 of the U.A.E. Law No. 4, the Attorney General of the U.A.E. has the exclusive authority to initiate criminal action against a perpetrator of offences set out in the law.

Tipping-off

4. Authorised Market Institutions are reminded that in accordance with Article 16 of the U.A.E. Law No.4 of 2002, Authorised Market Institutions or any of their Employees must not tip-off any Person, that is, inform any Person that his transaction is being scrutinised for possible involvement in suspicious Money Laundering operations, or that any other competent authority is investigating his possible involvement in suspicious Money Laundering operations.

11.9 Government, regulatory and international findings

11.9.1 An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) the Financial Action Task Force (FATF); and
- (d) the DFSA;

concerning arrangements for preventing money laundering or terrorist financing in a particular country or jurisdiction, including any assessment of material deficiency against relevant countries in adopting international standards.

Guidance

1. The systems and controls mentioned in Rule 11.9.1 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term “make appropriate use” in Rule 11.9.1 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.

2. When an Authorised Market Institution makes a decision about its anti money laundering policies, procedures, systems and controls, it should take into account any findings of inadequacy, for example, any notice or guidance issued by the FATF concerning the approach to money laundering of individual countries or jurisdictions.
3. An Authorised Market Institution should examine and pay special attention to any transactions or business relations with Persons located in such countries or jurisdictions.
4. An Authorised Market Institution considering transactions or business relationships with Persons located in countries or jurisdictions that have been identified as deficient, or against which the U.A.E. or the DFSA have outstanding advisories, should be aware of the background against which the assessments or the specific recommendations have been made.
5. The Authorised Market Institution's MLRO is not obliged to report all transactions from these countries or jurisdictions to the AMLSCU and the DFSA if they do not qualify as suspicious pursuant to U.A.E. Law No.4. See section 11.8 on internal and external reporting requirements.
6. Transactions with counterparties located in countries or jurisdictions which have been relieved from special scrutiny, for example, taken off the sources mentioned in this Guidance, may nevertheless require attention which is higher than normal.
7. In order to assist Authorised Market Institutions, the DFSA will, from time to time, publish U.A.E. national, FATF or other findings, guidance, directives or sanctions. However, the DFSA expects an Authorised Market Institution to take its own steps in acquiring relevant information from various available sources. For example, an Authorised Market Institution may obtain relevant information from the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and from the Office of Foreign Assets Control (OFAC) of the United States Department of Treasury.
8. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council's relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

11.9.2 An Authorised Market Institution must establish and maintain systems and controls to obtain and make appropriate use of any findings, recommendations, guidance, directives resolutions, sanctions, notices or other conclusions issued by:

- (a) the government of the U.A.E. or any government departments in the U.A.E.;
- (b) the Central Bank of the U.A.E. or the AMLSCU;
- (c) U.A.E. enforcement agencies; and
- (d) the DFSA;

concerning names of Persons, groups, organisations or entities or any other body where suspicion of money laundering or terrorist financing exists.

Guidance

1. The systems and controls mentioned in Rule 11.9.2 should be established and maintained by an Authorised Market Institution taking into account its risk assessment pursuant to section 11.10. In relation to the term “make appropriate use” in Rule 11.9.2 this may mean that an Authorised Market Institution cannot undertake a transaction for or on behalf of a Person or that it may need to undertake further due diligence in respect of a Person.
2. An Authorised Market Institution may obtain and appropriately use available national and international information, for example, suspect lists or databases from credible public or private sources, with regard to money laundering and terrorist financing. The DFSA encourages Authorised Market Institutions to perform checks against their Member databases and records for any names appearing on such lists and databases. In addition, the Authorised Market Institution may refer to the sources mentioned in Guidance under Rule 11.9.1.
3. Authorised Market Institutions should take note of GEN Rule 5.3.30 which requires such institutions to obtain and make appropriate use of the United Nations Security Council’s relevant resolutions and sanctions. Such resolutions and sanctions may, for example, relate to money laundering and terrorist financing and financing of weapons of mass destruction.

11.10 Money laundering risks**Risk assessment**

- 11.10.1** (1) The anti money laundering policies, procedures, systems and controls of an Authorised Market Institution must adequately address the money laundering risks which take into account any vulnerabilities of its products, services and Members.
- (2) In assessing the risks in relation to money laundering, an Authorised Market Institution must have regard to the relevant provisions of App2 and App3.
- (3) An Authorised Market Institution must assess its risks in relation to money laundering and perform enhanced due diligence investigations for higher risk products, services and Members.
- (4) An Authorised Market Institution must be aware of any money laundering risks that may arise from new or developing technologies that might favour anonymity and take measures to prevent their use for the purpose of money laundering.

Risks regarding corruption and politically exposed persons

- 11.10.2** (1) An Authorised Market Institution must have systems and controls to determine whether a Member is a Politically Exposed Person.
- (2) When an Authorised Market Institution has a Member relationship with a Politically Exposed Person, it must have specific arrangements to address the risks associated with corruption and Politically Exposed Persons.

Guidance

Guidance on how an Authorised Market Institution may address this risk is set out in App3 section A3.2.

Suspicious transactions and transaction monitoring

11.10.3 An Authorised Market Institution must establish and maintain policies, procedures, systems and controls in order to monitor and detect suspicious transactions.

Guidance

1. An Authorised Market Institution should apply an intensified and ongoing monitoring programme over higher risk transactions and accounts.
2. Various risk aspects about transaction monitoring and about the detection of suspicious transactions, which the Authorised Market Institution should take into account, are set out as further Guidance in App3 section A3.3.
3. An Authorised Market Institution may have transaction monitoring arrangements which are less sophisticated than those for clearing houses.

11.11 Transfer of funds

- 11.11.1** (1) Where an Authorised Market Institution makes a payment on behalf of a Person to a financial institution using an electronic payment and message system, it must include the Person's name, address and either an account number or a unique reference number in the payment instruction.
- (2) The requirement in (1) does not apply to an Authorised Market Institution which transfers funds to a financial institution where both the originator and the beneficiary are financial institutions acting on their own behalf.

Guidance

1. 'FATF Special Recommendation Number 7' seeks to ensure that national or international electronic payment and message systems, including fund or wire transfer systems such as SWIFT, are not misused as a means to break the money laundering audit trail. Therefore, the information about a Person as the originator of the fund transfer should remain with the payment instruction through the payment chain.
2. An Authorised Market Institution should monitor for and conduct enhanced scrutiny of suspicious activities including incoming fund transfers that do not contain complete originator information, including name, address and account number or unique reference number in accordance with App3.

11.12 Awareness and training

11.12.1 An Authorised Market Institution must have arrangements to provide periodic information and relevant training to all Employees to ensure that they are aware of:

- (a) the identity and responsibilities of the Authorised Market Institution's MLRO;
- (b) the Authorised Market Institution's anti money laundering regime in relation to its Members pursuant to Rule 11.4.2;
- (c) applicable legislation relating to anti money laundering;
- (d) the potential effect on the Authorised Market Institution, its Employees and its Members of breaches of applicable legislation relating to money laundering;
- (e) the Authorised Market Institution's anti money laundering policies, procedures, systems and controls and any changes to these;
- (f) money laundering risks, trends and techniques;
- (g) the types of activity that may constitute suspicious activity in the context of the business in which an Employee is engaged that may warrant an internal Suspicious Transaction Report pursuant to Rule 11.8.1;
- (h) the Authorised Market Institution's arrangements regarding the making of an internal Suspicious Transaction Report pursuant to Rule 11.8.2;
- (i) requirements relating to Member identification and ongoing due diligence and scrutiny pursuant to the Rules in section 11.7; and
- (j) the use of findings, recommendations, guidance, directives, resolutions, sanctions, notices or other conclusions described in section 11.9 and GEN Rule 5.3.30.

11.12.2 Information described under Rule 11.12.1 must be brought to the attention of new Employees and must remain available to all Employees.

11.12.3 (1) An Authorised Market Institution must have arrangements to ensure that:

- (a) its anti money laundering training is up-to-date with money laundering trends and techniques;
- (b) its anti money laundering training is appropriately tailored to the Authorised Market Institution's different activities, services, Members and indicates any different levels of money laundering risk and vulnerabilities; and
- (c) all Employees receive anti money laundering training.

- (2) An Authorised Market Institution must conduct anti money laundering training sessions with sufficient frequency to ensure that within 12 months it is provided to all Employees.
- 11.12.4** (1) All relevant details of the Authorised Market Institution's anti money laundering training must be recorded, including:
- (a) dates when the training was given;
 - (b) the nature of the training, and
 - (c) the names of the Employees who received the training.
- (2) These records must be kept for at least six years from the date on which the training was given.

12 NOT CURRENTLY IN USE

13 NOT CURRENTLY IN USE

14 APPEALS OF AUTHORISED MARKET INSTITUTION DECISIONS

14.1 Application

- 14.1.1** (1) Pursuant to Article 70(2)(d) of the Markets Law 2012, any Person who:
- (a) is aggrieved by a decision of the Authorised Market Institution;
 - (b) has a right to a further appeal of the Authorised Market Institution decision to a tribunal under the Business Rules of that Authorised Market Institution; and
 - (c) has exhausted the internal appeal process of that Authorised Market Institution;
- may appeal the Authorised Market Institution decision to the Financial Markets Tribunal by a notice in writing sent to the Financial Markets Tribunal within 30 days after the date on which the Authorised Market Institution sent the notice of the decision to the person.
- (2) The grounds on which an appeal may lie under this Rule are limited to the following:
- (a) an error of law or jurisdiction;
 - (b) a breach of the rules of natural justice; or
 - (c) the decision is manifestly unreasonable.
- (3) The Financial Markets Tribunal has jurisdiction to hear and determine an appeal of an Authorised Market Institution decision filed under this Rule and may uphold, vary or reverse the Authorised Market Institution decision under appeal or refer the matter back to the Authorised Market Institution for further reconsideration.
- (4) The powers of the Financial Markets Tribunal prescribed under Article 71 of the Markets Law 2012 apply to appeals brought under this Rule.



APP1 NOT CURRENTLY IN USE

APP2 IDENTIFICATION AND ONGOING DUE DILIGENCE REQUIREMENTS

A2.1 Duties and responsibilities

Guidance relating to Rule 11.7.1

1. Pursuant to Rule 11.7.1, an Authorised Market Institution is required to be satisfied that a prospective Member is who he claims to be and obtain evidence to verify this.
2. It is important for an Authorised Market Institution to obtain such information because this process should allow for the risk of being exploited for the purpose of money laundering to be reduced to a minimum.
3. Any unusual facts of which an Authorised Market Institution becomes aware during the identification process may be an indication of money laundering and should prompt the Authorised Market Institution to request supplementary information and evidence.
4. The following list, which is not meant to be exhaustive, should be considered as Guidance regarding the type of information and evidence which should be obtained by an Authorised Market Institution to establish and verify the identity of a Member.

Individuals

- a. Evidence to be obtained in either documentary (hard copy) or electronic form:
 - i. true full name or names used;
 - ii. complete current permanent address, including all relevant details with regard to country of residence;
 - iii. telephone, fax number and email address;
 - iv. date and place of birth;
 - v. nationality;
 - vi. fiscal residence;
 - vii. occupation or profession, name of employer and location of activity;
 - viii. information regarding the nature of the business to be conducted;
 - ix. information regarding the origin of the funds; and
 - x. information regarding the source of wealth or income.
- b. The address of a prospective Member should enable an Authorised Market Institution to physically locate the Member. If P.O. Box numbers are customary to a country, additional methods of physically locating the Member should be applied.
- c. Documentary evidence of identity:
 - i. current, signed passport;
 - ii. current, signed ID card; or
 - iii. other identification documentation that is customary in the country of residence, such as driving licence, including a clear photograph of the prospective Member.
- d. An Authorised Market Institution should ensure that any documents used for the purpose of identification are original documents.

- e. Where personal identity documents, such as passport, ID card or other identification documentation cannot be obtained in original form, for example because the Member is not physically present in the DIFC the identification documentation provided should be certified as a true copy of the original document by any one of the following:
 - i. a registered lawyer;
 - ii. a registered notary;
 - iii. a chartered accountant;
 - iv. a government ministry;
 - v. a post office;
 - vi. a police officer; or
 - vii. an embassy or consulate.
- f. The individual or authority undertaking the certification under (e) should be contactable if necessary.
- g. Where a copy of an original identification document is made by an Authorised Market Institution, the copy should be dated, signed and marked with 'original sighted'.
- h. Documentary evidence of address:
 - i. record of home visit;
 - ii. confirmation from an electoral register search that a Person of such a name lives at that address;
 - iii. tenancy agreement;
 - iv. utility bill; or
 - v. local authority tax bill.

Unincorporated businesses or partnerships

- i. Evidence to be obtained in either documentary or electronic form:
 - i. true full name or names;
 - ii. complete current registered and trading address, including relevant details with regard to country of establishment;
 - iii. telephone, fax number and email address;
 - iv. fiscal residence;
 - v. business activity;
 - vi. information on the nature of the business to be conducted;
 - vii. trading licence, with renewal date;
 - viii. list of authorised signatories of the business or partnership;
 - ix. regulatory body, if applicable;
 - x. information regarding the origin of funds; and
 - xi. information regarding the source of wealth/income.
- j. Documentary evidence of identity:
 - i. latest annual report and accounts, audited where applicable, and
 - ii. certified copy of the partnership deed, to ensure that it has a legitimate purpose and to ascertain the nature of the business or partnership.
- k. Evidence of the trading address of the business or partnership should be obtained and may be verified with a visit to the place of business.

Corporate entities including financial or credit institutions

- l. Evidence to be obtained in either documentary or electronic form:
 - i. registered corporate name and any trading names used;

- ii. complete current registered address and any separate principal trading addresses, including all relevant details with regard to country of residence;
 - iii. telephone, fax number and email address;
 - iv. date and place of incorporation;
 - v. corporate registration number;
 - vi. fiscal residence;
 - vii. business activity;
 - viii. regulatory body, if applicable;
 - ix. name and address of Group, if applicable;
 - x. legal form;
 - xi. name of external auditor;
 - xii. information regarding the nature and level of the business to be conducted;
 - xiii. information regarding the origin of the funds; and
 - xiv. information regarding the source of wealth/income.
- m. Documentary evidence of identity:
- i. copy of the extract of the register of the regulator or exchange, or state law or edict creating the entity, in case of regulated, listed or state-owned companies;
 - ii. certified copy of the articles of association or statutes;
 - iii. certified copy of either the certificate of incorporation or the trade register entry and the trading licence including the renewal date;
 - iv. latest annual report, audited and published if applicable;
 - v. certified copies of the list of authorised signatories specifying who is authorised to act on behalf of the Member account and of the board resolution authorising the signatories to operate the account;
 - vi. certified copies of the identification documentation of the authorised signatories;
 - vii. names, country of residence, nationality of directors or partners and of the Members of the governing body; and
 - viii. list of the main shareholders holding more than 5% of the issued capital.
- n. If the applying Member is not obliged to publish an audited annual report, adequate information about the financial accounts should be obtained.
- o. An Authorised Market Institution should verify that the applying Member is active and has not been, or is not in the process of being dissolved, wound-up or terminated.
- p. Pursuant to Rules 11.7.4, identification evidence is not required for Members which are Authorised Market Institutions.
- q. However, the confirmation of the existence of such a relevant firm or institution under Guidance note 2.s. above and its regulatory status should be verified by the Authorised Market Institution prior to entering into a Member relationship. Regular professional and commercial checks and due diligence investigations should still be performed.
5. The DFSA will from time to time:
- a. review the Guidance under App2 in light of changing money laundering legislation issued by the U.A.E. Central Bank, money laundering trends and techniques and according to international standards, in order to keep the Guidance current; and
 - b. provide such other Guidance as it deems appropriate regarding Member identification obligations.

- c. The DFSA expects that an Authorised Market Institution will take these changes into account by amending, as appropriate, its policies, procedures, systems and controls including its anti money laundering regime for Members.
6. Sound Member identification arrangements have particular relevance to the safety and soundness of an Authorised Market Institution, in that:
 - a. they help to protect its reputation and the integrity of the DIFC by reducing the likelihood of Authorised Market Institutions becoming a vehicle for, or a victim of, financial crime and suffering consequential reputational damage; and
 - b. they constitute an essential part of sound risk management.
7. In accordance with Rule 11.7.1, an Authorised Market Institution should adopt a risk-based approach for the Member identification and verification process. Depending on the money laundering risk assessment regarding the Authorised Market Institution's Member, the Authorised Market Institution should decide to what level of detail the Member identification and verification process will need to be performed. See also Rules under section 11.10. The risk assessment regarding a Member should be recorded in the Member file.
8. The risk-based approach does not release an Authorised Market Institution from its overall obligation to identify fully and obtain evidence of Member identification to the DFSA's satisfaction.
9. An Authorised Market Institution is advised that in cases of doubt it should adopt a stricter rather than a moderate approach in its judgement concerning the risk level and the level of detail to which Member identification is performed and evidence obtained.

Guidance relating to Rule 11.7.3.

10. Pursuant to Rule 11.7.3, an Authorised Market Institution must ensure that the information and evidence concerning a Member's identity is accurate and up-to-date.
 - a. An Authorised Market Institution is expected to ensure that the information and the evidence obtained from a Member is valid and has not expired, for example, when obtaining copies of identification documentation such as a passport or trading licence.
 - b. The Member identification process does not end at the point of application. Following the start of the Member relationship, an Authorised Market Institution should ensure that all relevant evidence and information is kept up-to-date including, for example, the list of authorised signatories who can act on behalf of a corporate Member.
 - c. If a Member account is dormant or an Authorised Market Institution has had no contact with the Member within the previous twelve months, an Authorised Market Institution should take reasonable steps to verify whether available information, documentation and evidence concerning the Member is still valid and up-to-date.
 - d.
11. When conducting ongoing due diligence on the business relationship with, and scrutiny of transactions undertaken by, a Member, an Authorised Market Institution should:
 - a. ensure consistency of such transactions with its knowledge of the Member and the Member's purpose and risk profile; and
 - b. verify, where necessary, the source of funds.

APP3 MONEY LAUNDERING RISKS

A3.1 Risk assessment

Guidance relating to Rule 11.10.1

1. The securities sector on a global scale is characterised by its diversity, the ease with which trading can take place (through electronic trading for example) and the ability to perform transactions in markets with little regard to national borders. These characteristics, along with the sheer volume of transactions, also make the securities sector potentially vulnerable to the laundering of funds. The securities sector is to be understood in the broader sense and shall include all trading and related activities relating to Investments.
2. The illegal funds laundered through the securities sector may be generated by illegal activities both from outside and from within the sector. For illegal funds generated outside the sector, securities transactions or the creation of legal entities are used as the mechanism for concealing or obscuring the source of these funds. In the case of illegal activities carried out within the securities market itself, for example, embezzlement, insider trading, securities fraud, market manipulation, terrorist financing etc., the securities transactions or manipulations generate illegal funds that must then be laundered.
3. Funds in the form of cash are generally introduced into the financial system before entering the securities sector. Consequently, the securities sector is less at risk than the banking sector regarding the placement of laundered funds directly into the securities industry. However, the securities sector is especially vulnerable to the layering of laundered funds subsequent to the placement phase.
4. Generally, an Authorised Market Institution is expected to take a risk-based approach when assessing any business relationship or transaction with respect to its specific money laundering risk and the information and evidence that might be required or validated for this purpose. ‘Know Your Member’ procedures need to be established and managed according to the perceived money laundering risk.
5. a. The Authorised Market Institution should take specific and adequate measures necessary to compensate for the higher risk of money laundering which might arise, for example from the following products, services or Members:
 - i. “Wash sales” or other fictitious trading schemes to transfer money or value through the clearing and settlement infrastructure;
 - ii. activities of employees that unwittingly are requested to take actions which further a Person’s money laundering scheme; including the activities of “rogue employees”;
 - iii. acceptance of orders and related funds from intermediaries or banks operating from jurisdictions that do not have effective systems in place to prevent the introduction of laundered funds into the investment firms and banks operating in those jurisdictions;
 - iv. non face-to-face business relationships or transactions, such as via mail, telephone or the Internet;
 - v. correspondent banking relationships, see also Rule 11.7.9;
 - vi. Members from higher-risk countries as may be found in sources mentioned in Guidance under Rule 11.9.1; and
 - vii. Politically Exposed Persons, see also Rule 11.10.2

- b. Pursuant to Rule 11.10.3, an Authorised Market Institution should apply an intensified monitoring of transactions and accounts in relation to these products, services and Members.
6. While an Authorised Market Institution should assess the money laundering risks posed by the products and services it offers and devise its products with due regard to those risks, a risk-based approach does not release the Authorised Market Institution from its overall obligation to comply with anti money laundering obligations.
7. Money laundering risks are increased if a Person is able to hide behind corporate structures such as limited companies, offshore trusts, special purpose vehicles and nominee arrangements. When devising its internal procedures, an Authorised Market Institution should consider how its Members and operational systems impact upon the capacity of its staff to identify suspicious transactions.
8. The geographical location of an Authorised Market Institution's Member may also affect the money laundering risk assessment. The DFSA recommends that where an Authorised Market Institution has Members located in countries:
 - a. without adequate anti money laundering strategies;
 - b. where cash is the normal medium of exchange;
 - c. which have a politically unstable regime with high levels of public or private sector corruption;
 - d. which are known to be drug producing or drug transit countries; or
 - e. which have been classified as countries with inadequacies in their anti money laundering regulations, see Rule 11.9.1;it should consider which additional 'Know Your Member' and monitoring procedures might be necessary to compensate for the enhanced risks of money laundering. Such measures may encompass, for example, the following:
 - f. requiring additional documentary evidence;
 - g. taking supplementary measures to verify or certify the documents supplied; or
 - h. performing direct mailing of account opening documentation to a Member at an independently verified address.

A3.2 Risks regarding corruption and politically exposed persons

Guidance relating to Rule 11.10.2

1. Corruption, especially with the involvement of Politically Exposed Persons, may involve serious crimes and has become the subject of increasing global concern. The risk for an Authorised Market Institution can be reduced if the Authorised Market Institution conducts detailed 'Know Your Member' investigations at the beginning of a relationship with an Individual and on an ongoing basis where it knows, suspects, or is advised that, the business relationship involves a Politically Exposed Person. An Authorised Market Institution should develop and maintain enhanced scrutiny and monitoring practices to address this risk, see also App2.
2. Where a Member relationship is maintained with a Politically Exposed Person, detailed monitoring and due diligence procedures should include:

- a. analysis of any complex structures, for example involving trusts or multiple jurisdictions;
 - b. appropriate measures to establish the source of wealth;
 - c. development of a profile of expected activity for the business relationship in order to provide a basis for transaction and account monitoring;
 - d. senior management approval for the Member relationship; and
 - e. regular oversight of the relationship with a Politically Exposed Person by senior management.
3. An Authorised Market Institution is advised that Member relationships with family Members or close associates of Politically Exposed Persons involve similar risks to those with Politically Exposed Persons themselves.

A3.3 Suspicious transactions and transaction monitoring

Guidance relating to Rule 11.10.3

1.
 - a. The Rules in section 11.8 require a Suspicious Transaction Report to be made when there is knowledge or suspicion of money laundering. Suspicion is a personal and subjective assessment. Suspicion of money laundering requires a degree of satisfaction although this may not amount to belief, it should at least extend beyond mere speculation and should be based upon some foundation that money laundering has occurred or is about to occur.
 - b. A Member of staff who considers a transaction to be suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.
 - c. The Rules in section 11.8 also make reference to 'reasonable grounds to suspect' which introduces an objective test rather than a subjective test of suspicion by assessing whether or not 'suspicion' was ignored in the way of:
 - i. wilful blindness;
 - ii. negligence, that is wilfully and recklessly failing to make the adequate enquiries; or
 - iii. failing to assess adequately the facts and information that are either presented or available.
2. Circumstances that might give rise to suspicion or reasonable grounds for suspicion may be:
 - a. transactions which have no apparent purpose and which make no obvious economic sense;
 - b. transactions requested by a Member without reasonable explanation, which are out of the ordinary range of services normally requested or are outside the experience of an Authorised Market Institution in relation to a particular Member or Person;
 - c. the size or pattern of transactions, without reasonable explanation, is out of line with any pattern that has previously emerged;
 - d. a Member or Person refuses to provide the information requested without reasonable explanation;

- e. a Member or Person who has just entered into a business relationship uses the relationship for a single transaction or for only a very short period of time;
- f. an extensive use of offshore accounts, companies or structures in circumstances where the Member's economic needs do not support such requirements;
- g. unnecessary routing of funds through third party accounts; or
- h. unusual transactions without an apparently profitable motive.