

Appendix 5

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



The DFSA Rulebook

Conduct of Business Module

(COB)

1 INTRODUCTION

1.1 Application

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1.1.2 COB does not apply to a Representative Office.

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- 2.3.1** (1) Subject to (2), before carrying on a Financial Service with or for a Person, an Authorised Firm must determine whether such a Person is a Professional Client in accordance with Rule 2.3.2, in respect of all or particular Financial Services or products offered by the Authorised Firm.
- (2) An Authorised Firm is not required to comply with (1) in relation to a particular Person where it:
- (a) treats that a Person as a Retail Client; or
 - (b) ~~does one or both of the following carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing with that Person and provides no other Financial Service to the that Person concerned: .~~
 - (i) ~~referring that Person to another Authorised Firm or any entity regulated by a Financial Services Regulator; or~~
 - (ii) ~~giving that Person generic advice as defined in GEN Rule 2.11.1(3) or GEN Rule 2.19.1(4)(b) or as part of making invitations as defined in GEN Rule 2.9.1(2)(b) or 2.19.1(6)(b).~~
- (3) If an Authorised Firm is aware that a Client with or for whom it is intending to carry on a Financial Service is acting as an agent for another Person (the 'second person') in relation to a particular Transaction then, unless the Client is another Authorised Firm or a Regulated Financial Institution, the Authorised Firm must treat that second person as its Client in relation to that Transaction.

Guidance

Pursuant to GEN Rule 3.2.7, an Authorised Firm which is not a Representative Office may carry on activities which constitute marketing financial services and financial products offered in a jurisdiction other than the DIFC. The effect of Rule 2.3.1(2)(b) is to provide a carve out for an Authorised Firm from the requirements under Rule 2.3.1(1) when the firm is carrying on such marketing activities. An Authorised Firm conducts the activity of arranging as defined in GEN section 2.9 and 2.19 when making referrals. However, an Authorised Firm is not required to undertake the Client classification process set out in Rule 2.3.2 where it makes a referral within the parameters in Rule 2.3.1(2)(b). Under other provisions in this module, an Authorised Firm is also exempt from other specific requirements when making such referrals when carrying on such marketing activities under Rules 3.3.1(d) and 3.4.1(d).

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- 3.3.1** The Rules in this section do not apply to an Authorised Firm when it is:
- (a) carrying on a Financial Service with or for a Market Counterparty;
 - (b) Accepting Deposits;
 - (c) Providing Credit;
 - (d) carrying on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing making a referral or giving generic advice in the circumstances referred to in Rule 2.3.1(2)(b); or
 - (e) an Operator of a Fund Offering the Units of a Fund it operates.

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- 3.4.1** The Rules in this section do not apply where the Authorised Firm:
- (a) undertakes a Transaction with a Market Counterparty;
 - (b) undertakes an Execution-Only Transaction;
 - (c) undertakes the activities of Accepting Deposits or Providing Credit; or
 - (d) carries on an activity of the kind described in GEN Rule 2.26.1 that constitutes marketing makes a referral or gives generic advice in the circumstances referred to in Rule 2.3.1(2)(b).