



Conduct of Business Rules (COBS)

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

2. CLIENT CLASSIFICATION

2.1 Application

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2.1.3 This chapter does not apply to:

- (a) a Credit Rating Agency in so far as it carries on, or intends to carry on, the Regulated Activity of Operating a Credit Rating Agency;
- (b) an Authorised ISPV;
- (c) an Authorised Person in so far as it carries on, or intends to carry on, the Regulated Activity of Providing Money Services; or
- (d) an Authorised Person in so far as it carries on, or intends to carry on, the Regulated Activity of Providing Third Party Services.

Guidance

1. ~~The Regulated Activity of Operating a Representative Office described in section paragraph 67 of Chapter 14 of Schedule 1 of FSMR refers to the marketing of Regulated Activities and Specified Investments which are offered in a jurisdiction outside the Abu Dhabi Global Market. Such marketing activities can be conducted by an Authorised Person that holds a Representative Office Financial Services Permission, provided the Regulated Activities or Specified Investments marketed by it are those offered by its head office, or a member of its Group. Such an Authorised Person does not have a client relationship with a Person to whom it markets a Specified Investment or engages with in relation to carrying on a Regulated Activity, and the client classification requirements in this Chapter do not apply to the Authorised Person with regard to its engagement with that Person.~~
2. ~~As a Representative Office conducting marketing activities of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR does not have a client relationship with a Person to whom it markets a Specified Investment or engages with in relation to carrying on a Regulated Activity, the client classification requirements in this chapter do not apply to the Authorised Person with regard to its engagement with that Person.~~
3. ~~Other Authorised Persons can also conduct marketing activities of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR under the exclusion in section 67(5) of Chapter 14 of Schedule 1 of FSMR.~~
42. An Authorised Person undertaking the Regulated Activity of Providing Money Services, as described in Chapter 8 of Schedule 1 of FSMR does not have a client relationship with a Person to whom it Provides Money Services, either as Payer or Payee, so the client classification requirements in this chapter do not apply to that Authorised Person.

2.2 Client Categorisation

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

- (a) Retail Client; and

~~(b) Professional Client; and~~

~~(c)(b) Market Counterparty.~~

~~2.2.2 A Person may be classified into one category of Client in relation to the carrying on of a Regulated Activity where this involves provision of a service to a Client, product or Transaction, but another category of Client in relation to another such Regulated Activity and corresponding service, product or Transaction. An Authorised Person must ensure that a Client is appropriately and correctly classified with respect to each Regulated Activity, service, product or Transaction.~~

~~2.2.3 If an Authorised Person is aware that a Client, with or for whom it is intending to carry on a Regulated Activity where this involves provision of a service to a Client, is acting as an agent for another Person (the "second person") in relation to a particular Transaction, then unless the Client is another Authorised Person, a Recognised Body or a Remote Body, the Authorised Person must also treat that second person as its Client in relation to that Transaction.~~

~~2.2.4 If an Authorised Person intends to carry on any Regulated Activity where this involves provision of a service to a customer which is a trust, it must unless otherwise provided in the Rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its Client.~~

Guidance

- ~~1. The point at which a Person becomes a Client of an Authorised Person is a question of fact that needs to be addressed by the Authorised Person in light of the nature of the relevant Regulated Activity (or Specified Investment) involved, and the relations and interactions which the Authorised Person has with that Person. For instance, in certain types of Regulated Activities (such as corporate advisory services), a number of conversations (such as marketing and promotional activities) may occur between an Authorised Person and a potential client before it may appear to the Authorised Person on a reasonable basis that the Authorised Person is likely to be carrying on a Regulated Activity where this involves provision of a service to a Client, at which point a client classification is required.~~
2. The Client classification must take place before an Authorised Person carries on a Regulated Activity where this involves provision of a service to a Client. However, this does not preclude marketing prior to such classification being documented and notified.
3. The Regulator expects Authorised Persons to adopt practices which are consistent with the underlying intent of the client classification provisions, which is to provide Clients with an appropriate level of regulatory protection in light of the resources and expertise available to such Clients. Therefore, as soon as it is reasonably apparent that an Authorised Person is likely to carry on a Regulated Activity where this involves provision of a service to a potential customer, it should undertake the client classification process relating to that customer.
4. For example, an Authorised Person is not expected to undertake advising or arranging activities relating to a Regulated Activity or Specified Investment which is suited to Professional Clients (e.g. complex derivatives) with a potential customer without having a reasonable basis to consider that such a customer has sufficient knowledge and experience relating to the relevant activity or

product. Whilst a formal client classification may not be needed at the early stages of interaction, an Authorised Person is expected to form a reasonable view about the professional status of a potential Client when exposing such a customer to Regulated Activities or Specified Investment (such as investments in a Qualified Investor Fund) which are intended for Professional Clients.

5. A Person may be classified into one category of Client in relation to the carrying on of a Regulated Activity where this involves provision of a Regulated Activity, service or Product to a Client, but another category in relation to another Regulated Activity and corresponding service, product or Transaction.

2.2.3 If an Authorised Person is aware that a Client, with or for whom it is intending to carry on a Regulated Activity where this involves provision of a service to a Client, is acting as an agent for another Person (the "second person") in relation to a particular Transaction, then unless the Client is another Authorised Person, a Recognised Body, a Remote Body, or a Regulated Financial Institution, the Authorised Person must also treat that second person as its Client in relation to that Transaction.

2.2.4 If an Authorised Person intends to carry on any Regulated Activity where this involves provision of a service or product to a Client which is a trust, it must unless otherwise provided in the Rules, treat the trustee of the trust, and not the beneficiaries of the trust, as its Client.

2.3 Retail Clients

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

2.4 Professional Clients

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

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

Guidance

1. A Professional client, whether a "deemed" Professional Client or an "assessed" Professional Client is a Client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.

2. An "assessed" Professional Client should not be presumed to possess market knowledge and experience comparable to a "deemed" Professional Client.

2.4.2 "Deemed" Professional Clients

- (a) A Person is a "deemed" Professional Client if that Person is:

- (i) a Person which, as at the date of its most recent financial statements, met at least two of the following requirements:
 - (A) a balance sheet total of US\$20 million;
 - (B) a net annual turnover of US\$40 million; or
 - (C) own funds or called up capital of at least US\$2 million(a "Large Undertaking");
 - (ii) a supranational organisation whose members are either countries, central banks or national monetary authorities;
 - (iii) a properly constituted government, government agency, central bank or other national monetary authority of any country or jurisdiction;
 - (iv) a public authority or state investment body;
 - (v) a Recognised Body or Remote Body;
 - (vi) an Authorised Person;
 - ~~(vi)~~(vii) a Regulated Financial Institution;
 - ~~(vii)~~ the management company of a regulated pension fund;
 - (viii) a Collective Investment Fund or a regulated pension fund;
 - (ix) a Body Corporate whose shares are listed or admitted to trading on any exchange of an IOSCO member country;
 - (x) any other institutional investor whose main activity is to invest in Financial Instruments, including an entity dedicated to the securitisation of assets or other financial transactions;
 - (xi) a trustee of a trust which has, or had during the previous twelve months, assets of at least US\$10,000,000. An individual trustee on the board of such a trust is only a "deemed" Professional Client in relation to that particular trust; or
 - ~~(xii)~~ a single family office with respect to its activities carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a single family office; or
 - ~~(xiii)~~(xii) a Subsidiary or a Parent of any of the Persons described in Rules 2.4.2(a)(i)-(xii).
- (b) An Authorised Person must have a reasonable basis for classifying a Person as falling within the list of "deemed" Professional Clients above, including by inspecting copies of any necessary supporting documentation and keeping records of the same.

2.4.3 "~~Service-based~~" Professional Clients [Deleted]

- ~~(a)~~ Subject to paragraph (b), a Person is a "~~Service-based~~" Professional Client if:

- ~~(i) the Regulated Activity carried on, where this involves provision of a service to a Client, is Providing Credit and;
 - ~~(A) the Person is an Undertaking; and~~
 - ~~(B) the Credit Facility in question is provided for use in the business activities of:
 - ~~a. the Person;~~
 - ~~b. a Controller of the Person;~~
 - ~~c. any member of the Group to which the Person belongs; or~~
 - ~~d. a joint venture of a Person referred to in a to c; or~~~~~~
 - ~~(ii) the Regulated Activity carried on, where this involves provision of a service to a Client, is Advising on Investments or Credit, Arranging Credit or Arranging Deals in Investments and the service is provided for the purposes of Corporate Structuring and Financing.~~
- ~~(b) A "Service-based" Professional Client may elect to be treated as a Retail Client in accordance with Rule 2.6.1.~~
- ~~(c) An Authorised Person must have a reasonable basis for classifying a Person as falling within the list of "Service-based" Professional Clients above such as inspecting copies of any necessary supporting documentation and keeping records of the same.~~

Guidance

- ~~1. An Authorised Person may classify an Undertaking as a Professional Client for the purposes of Providing Credit for business purposes, not only for the Undertaking itself, but also for its related entities (such as a Controller or member of its Group), provided that the Undertaking has not opted-in to be classified as a Retail Client.~~
- ~~2. An Authorised Person must decide whether to classify an Undertaking, that is a "deemed" Professional Client but would also qualify as a "Service-based" Professional Client, as a "deemed" Professional Client or as a "Service-based" Professional Client. "Deemed" Professional Clients are not able to opt to be classified as a Retail Client, but "Service-based" Professional Clients are. Generally, it would be more appropriate to classify such a Person as a "deemed" Professional Client rather than a "Service-based" Professional Client.~~
- ~~3. Joint ventures may be in the form of contractual arrangements under which parties contribute their assets and expertise to develop or to undertake specified business activities. Where an Undertaking is set up by participants in such a joint venture for the purposes of their joint venture, the Undertaking itself can be treated as a Professional Client provided a joint venture partner meets the Professional Client criteria. To be able to rely on a joint venture partner's Professional Client status, such a partner should generally be a key decision maker with respect to the business activities of the joint venture, and not just a silent partner.~~
- ~~4. Advisory and arranging services given to an individual who is a wealth management client for the purposes of their investment activities or portfolio~~

~~management are excluded because such clients are not necessarily Professional Clients. Therefore, for such a client to qualify as a Professional Client, he would need to be an "assessed" Professional Client.~~

2.4.4 "Assessed" Professional Clients

Individuals

~~(a) An individual may be treated as an "assessed" Professional Client (instead of a Retail Client) if~~ For the purposes of this Rule 2.4.4, "family members" shall be determined in accordance with Article 3 of the Companies Regulations.

~~(a)(b) An individual may be treated as an "assessed" Professional Client (instead of a Retail Client) if:~~

(i) the individual has net assets (including any assets held directly or indirectly by that person) of at least ~~US\$500,000, or US\$1,000,000 in the case of the Promotion of a Passported Fund~~ (including any assets held directly or indirectly by that person), the calculation of which must exclude:

~~(A)~~ (A) property which is that person's primary residence or any loan secured on that residence;

~~(B)~~ (B) any rights of that person under a qualifying Contract of Insurance within the meaning of FSMR; and

~~(C)~~ (C) any benefits (in the form of pensions or otherwise) which are payable on the termination of that person's service or on death or retirement and to which that person or that person's dependents are, or may be, entitled;

(ii) either:

(A) the individual is, or has been, in the previous twelve months, or two years in the case of the Promotion of a Passported Fund, an Employee in a professional position of an Authorised Person, a Recognised Body, ~~or Remote Body~~; or Regulated Financial Institution; or

(B) the individual appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks, following the analysis set out in Rule 2.6.2; and

(iii) the individual has not opted to be classified as a Retail Client.

~~(b)(c) An Authorised Person may classify any legal structure or vehicle, such as an Undertaking, trust or foundation, which is set up solely for the purpose of facilitating the management of an investment portfolio of an individual assessed as meeting the requirements in Rule 2.4.4(b) 2.4.4(a) as a Professional Client.~~

~~(e)(d) An Authorised Person may classify as a Professional Client an individual (a "joint account holder") who has a joint account with an individual assessed as meeting the requirements in Rule 2.4.4(b) 2.4.4(a) (the "primary account holder") if:~~

(i) the joint account holder is a ~~f~~Family ~~m~~Member of the primary account holder;

- (ii) the account is used for the purposes of managing investments for the primary account holder and the joint account holder; and
 - (iii) the joint account holder has confirmed in writing (or, in the case of a joint account operated by a primary account holder who is a parent or legal guardian of a minor, that parent or guardian exercises its authority to act for the minor in accordance with any necessary formalities) that investment decisions relating to the joint account are generally made for, or on behalf of, him by the primary account holder.
- (e) An individual acting as a primary account holder who has been classified as a Professional Client may operate a joint account with more than one ~~f~~Family ~~m~~Member. Provided that each such ~~f~~Family ~~m~~Member meets the requirements set out in Rule 2.4.4(d) ~~2.4.4(e)~~, they may all be classified as Professional Clients.

Guidance

1. A legal structure or vehicle established for investment purposes for an individual who are themselves a Professional Client may not opt to be treated as a Retail Client, as that right belongs to the Professional Client for whose purposes the legal structure or vehicle is set up.
- 4.2. A joint account holder for whom investment decisions are being made by a primary account holder who is a Professional Client does not per se have a right to opt to be classified as a Retail Client with regard to the operation of the joint account, but may withdraw confirmation given to have decisions on behalf of him made by the Professional Client who is the primary account holder of the joint account. In such event, the Authorised Person must ensure that the withdrawing individual is no longer classified as a Professional Client, and that the operating of the joint account will not reflect treatment as a Professional Client until such time as the assets of the withdrawing joint account holder are withdrawn from the joint account.
- ~~(d) A legal structure or vehicle of a Professional Client which is itself classified as a Professional Client may not opt to be treated as a Retail Client, as that right belongs to the Professional Client for whose purposes the vehicle is set up.~~
- ~~(e) A Family Member of a Professional Client classified as a Professional Client under Rule 2.4.4(c) does not per se have a right to opt to be classified as a Retail Client with regard to the operation of the joint account.~~
- ~~(f) A Family Member of a Professional Client classified as a Professional Client under Rule 2.4.4(c) may withdraw his confirmation given to have decisions on behalf of him made by the Professional Client who is the primary account holder of the joint account. An Authorised Person must ensure that once such a withdrawal is made, the withdrawing individual is no longer classified as a Professional Client.~~

Undertakings

An Authorised Person may classify an Undertaking as an "assessed" Professional Client if the Undertaking, or (as assessed by the Authorised Person) its Controller (provided that if such controller is a natural person, it meets the Professional Client criteria in Rule 2.4.4(b) ~~2.4.4(a)~~), Holding Company, Subsidiary or joint venture partner; ~~meets the criteria in either (i) or (ii):~~

~~(i) the Undertaking:~~

~~(A) has own funds or called up capital of at least US\$1,000,000 ~~US\$500,000~~;~~

~~(B) appears, on reasonable grounds, to have sufficient experience and understanding of relevant financial markets, products or transactions and any associated risks, following the analysis set out in Rule 2.6.2; and~~

~~(C) has not opted to be classified as a Retail Client.~~

~~(ii) the Undertaking meets any of the criteria in Rule 2.4.2 for a “deemed” Professional Client.~~

Guidance

1. In the calculation of net assets in Rule ~~2.6.4(i)~~ ~~2.4.4(a)(i)~~, the reference to "assets held directly or indirectly" is designed to include assets held by direct legal ownership, by beneficial ownership (e.g. as a beneficiary in a trust), or by both legal and beneficial ownership. Such assets may be held, for instance, through a special purpose or personal investment vehicle, a foundation, or similar. Similarly, any real property held subject to an Islamic mortgage, where the lender has the legal title to the property, may be counted as indirectly held property of a Client, less the amount owing on the mortgage, where it is not a primary residence. As the test is to determine the net assets (not gross assets) of an individual, any mortgages or other charges held over the property to secure any indebtedness of the individual should be deducted from the value of the assets. ~~An individual's primary residence is excluded from the calculation of their net assets.~~ If an individual who is an expatriate has a primary residence in his home country, such a residence should not generally be counted for the purposes of meeting the net asset test. However, if the current residence in the host country is owned by the individual, then that may be treated as their primary residence and the value of the residence in the home country of the individual may be counted for the purposes of meeting the net asset test, provided there is sufficient evidence of ownership and an objective valuation of the relevant premises. An Authorised Person should be able to demonstrate that it has objective evidence of the ownership and valuation of any assets taken into account for the purposes of meeting the net asset test.
2. Joint ventures may be in the form of contractual arrangements under which parties contribute their assets and expertise to develop or to undertake specified business activities. Where an Undertaking is set up by participants in such a joint venture for the purposes of their joint venture, the Undertaking itself can be treated as a Professional Client provided a joint venture partner meets the Professional Client criteria. To be able to rely on a joint venture partner's Professional Client status, such a partner should generally be a key decision maker with respect to the business activities of the joint venture, and not just a silent partner.
3. An Undertaking which meets the criteria to be a “deemed” Professional Client in accordance with the criteria in Rule 2.4.2 does not need to meet the criteria in this Rule to qualify as a Professional Client
4. An Undertaking which does not otherwise qualify as a Professional Client may deemed to be a Professional Client only for the purposes of the Regulated

Activities of Providing Credit, Advising on Investments or Credit, Arranging Credit or Arranging Deals in Investments for the purpose of Corporate Structuring and Finance, in accordance with Rule 4.3.3.

2.5 Market Counterparties

- (a) An Authorised Person may classify a Person as a Market Counterparty if:
- (i) that Person ~~is~~ qualifies as a "deemed" Professional Client in accordance with Rule 2.4.2; and
 - (ii) the requirements in Rule 2.5(b) have been met.
- (b) An Authorised Person must, before classifying a Person ~~Professional Client~~ as a Market Counterparty, ensure that such a Person has:
- (i) been given a prior written notification of the classification as a Market Counterparty in relation to a particular Regulated Activity or Transaction, or in respect of all Regulated Activities and Transactions; and
 - (ii) not requested to be classified otherwise within the period specified in the notice.
- ~~(c) The notification in Rule 2.5(b)(i) need only be given to:~~
- ~~(i) in the case of a Fund, either to the Fund or its Fund Manager; and~~
 - ~~(ii) in the case of a pension fund, either to such fund or its management company.~~

Guidance

In the case of a Market Counterparty which is a fund, trust or otherwise managed or held by a Person which qualifies as a "deemed" Professional Client, notification must be given to the Person which manages or holds the assets of the Market Counterparty.

2.6 Client Classification Procedures

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

- (a) A Professional Client has the right to elect to be classified as a Retail Client. An Authorised Person must, when first establishing a relationship with such a Person as a Professional Client, inform that Person of:
- (i) that Person's right to be classified as a Retail Client;
 - (ii) the higher level of protection available to Retail Clients; ~~and~~
 - (iii) the time within which the Person may elect to be classified as a Retail Client; and
 - (iii)(iv) the Client is responsible for keeping the Authorised Person informed about any change which could affect their current classification.
- (b) If the Person does not expressly elect to be classified as a Retail Client within the time specified by the Authorised Person, the Authorised Person may classify that Person as a Professional Client.

- (c) If such a Person already classified as a Professional Client by an Authorised Person expressly requests the Authorised Person to be re-classified as a Retail Client, the Authorised Person must re-classify such a Person as a Retail Client.
- (d) If an Authorised Person does not provide Regulated Activities to Retail Clients, it must inform the Person of this fact and any relevant consequences.

Guidance

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

2.6.2 Assessment of knowledge and experience

- (a) ...
- (b) Where the analysis is being carried out in respect of an Undertaking, the analysis must be applied to those individuals, officers or directors who are authorised to undertake transactions on behalf of the Undertaking.

2.6.3 Reliance on a classification made elsewhere

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

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2.6.4 Group clients

An Authorised Person that is a member of a Group and carries out one or more Regulated Activities where the Regulated Activities carried out by the Authorised Person form part of a bundle of Regulated Activities carried out for the benefit of that Client by and its Group members of the Authorised Person must ensure that:

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

Guidance

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

...

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

...

Marketing Material

3.2.4

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

~~(b)~~ Guidance

Marketing Material includes any invitation or inducement to Engage in Investment Activity.

~~(c)~~(b) An Authorised Person which communicates Marketing Material must:

- (i) ensure that the Marketing Material complies with the applicable Rules and any legislation administered by the Regulator; ~~and~~
- (ii) not distribute such Marketing Material if it becomes aware that the Person offering to carry on the Regulated Activity or offering the Specified Investment to which the Material relates is in breach of the regulatory requirements that apply to that Person in relation to that Specified Investment or Regulated Activity; and
- (iii) ensure that Marketing Material which is intended for Retail Clients is identified as Marketing Material and is identified as not being intended as investment advice.

Guidance

Marketing Material includes any invitation or inducement to Engage in Investment Activity.

...

3.3 Key Information and Client Agreement

3.3.1 Application

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

- (a) carrying on a Regulated Activity where this involves provision of a service to a Professional Client which is with or for a Market Counterparty;

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

3.3.2 Requirements

- (a) Subject to Rule 3.3.2(b), an Authorised Person must not carry on a Regulated Activity where this involves provision of a service to a Client unless:
 - (i) there is a Client Agreement entered into between the Authorised Person and that Person containing the key information specified in ~~Rule~~ Chapter 12 which is entered into either between the Authorised Person and that Person or in accordance with the requirements in Rule 3.3.2(c); and
 - (ii) before entering into the Client Agreement with the Person, the Authorised Person has provided to that Person the key information referred to in ~~Rule~~ Chapter 12 in good time to enable him to make an informed decision relating to the relevant Regulated Activity.
- (b) An Authorised Person may carry on a Regulated Activity where this involves provision of a service to a Client without having to comply with the requirement in Rule 3.3.2(a);
 - (i) where it is, on reasonable grounds, impracticable to comply, in which case an Authorised Person carrying on the Regulated Activity must:
 - (A) first explain to the Person why it is impracticable to comply; and
 - (B) enter into a Client Agreement as soon as practicable thereafter.
 - (ii) where the Client has expressly agreed to dispense with the requirement in regard to a legal structure or personal investment vehicle the Client has established for investment purposes.

...

3.3.3 ~~Information~~ [Deleted]

Guidance

- ~~(a)~~1. Chapter 12 sets out the core information that must be included in every Client Agreement and additional disclosure for certain types of activities to which this chapter applies.
- ~~(b)~~2. An Authorised Person may either provide a Person with a copy of the proposed Client Agreement, or give that information in a separate form. If there are any changes to the terms and conditions of the proposed agreement, the Authorised Person must ensure that the Client Agreement to be signed with the Person accurately incorporates those changes.
- ~~(c)~~3. An Authorised Person may consider it is reasonably impracticable to provide the key information to a Person if that Person requests the Authorised Person to

execute a Transaction on a time critical basis. Where an Authorised Person has explained why it is impracticable to comply with the requirement to enter into a Client Agreement orally, it must maintain records to demonstrate to the Regulator that it has provided that information to the Client.

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3.4 Suitability

3.4.1 Application

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

- (a) undertakes a Transaction with a Professional Client which is a Market Counterparty;
- (b) undertakes an Execution-Only Transaction;
- (c) undertakes the activities of Accepting Deposits, Providing Credit, Operating a Private Financing Platform, Operating a Multilateral Trading Facility or Operating an Organised Trading Facility; or
- (d) carries on an activity of the kind described in section 67 of Chapter 14 of Schedule 1 of FSMR that constitutes marketing.

...

3.4.2 Suitability Assessment

...

- (c) Where an Authorised Person is managing investments under a Discretionary Portfolio Management Agreement for a Professional Client for more than 12 months, it must consider whether or not to ensure that the account remains suitable for the particular Professional Client every 12 months, having regard to the matters specified in (a)(i) and (ii).

...

3.5.5 Conflicts Policy

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

Guidance

Conflicts of interest include conflicts arising from Soft Dollar Agreements entered into by the Authorised Person.

...

3.5.8 Inducements

- (a) An Authorised Person must have systems and controls including policies and procedures to ensure that neither it, nor an Employee or Associate of it, offers, gives, solicits or accepts inducements such as commissions or other direct or indirect benefits where such inducements are reasonably likely to conflict with any duty that it owes to its Clients. In circumstances where an Authorised Person believes on reasonable grounds that the Client's interests are better served by a Person to whom the referral is to be made, any commission or other benefit which the Authorised Person or any of its Employees or Associates receives in respect of such a referral would not be a prohibited inducement under ~~that~~ this Rule.
- (b) Subject to Rule 3.5.8(c), an Authorised Person must, before recommending a Specified Investment to, or Executing a Transaction for, a Retail Client, disclose to that Client any commission or other direct or indirect benefit which it, or any Associate or Employee of it, has received or may or will receive, in connection with or as a result of the Authorised Person making the recommendation or executing the Transaction.
- (c) An Authorised Person may provide the information required under Rule 3.5.8(b) in summary form, provided it informs the Client that more detailed information will be provided to the Client upon request and the Authorised Person complies with such a request.

...

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

...

4.3 Providing Credit

- 4.3.1 An Authorised Person may Provide Credit to a Professional Client ~~or Market Counterparty~~.

- 4.3.2 An Authorised Person may Provide Credit to a Retail Client only where:

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

- 4.3.3 (a) An Undertaking is deemed to be a Professional Client for the purposes of the Regulated Activities of Providing Credit, Advising on Investments or Credit, Arranging Credit or Arranging Deals in Investments if such services are being provided to:

- (i) the Undertaking;
- (ii) the Controller of the Undertaking, which is also an Undertaking;
- (iii) any member of a Group to which the Undertaking belongs; or
- (iv) a joint venture involving the Persons described in 4.3.3.(i)-(iii)

for the purpose of Corporate Structuring and Financing.

(b) An Undertaking which does not otherwise qualify as a Professional Client under Chapter 2 must be treated as a Retail Client in respect of all other Regulated Activities and Transactions not identified in this Rule.

Guidance

Pursuant to Rule 4.3.3, Undertakings which engage an Authorised Person for the purpose of engaging in any of the Regulated Activities of Providing Credit, Advising on Investments or Credit, Arranging Credit or Arranging Deals in Investments may be considered by the Authorised Person as a Professional Client for such Regulated Activities and Transactions only, provided such services have been obtained for the purpose of Corporate Structuring and Financing.

4.4 Depositor Protection

4.4.1 (a) In the event of:

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

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

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

...

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

...

5.13.1 Where a Trust Service Provider arranges for a Person who is not an Employee of the Trust Service Provider to act as trustee for a Client of the Trust Service Provider, the Trust Service Provider must ensure that such Person is fit and proper.

...

6.3 Record Keeping

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

Guidance

Where an Authorised Person holds a mandate, or similar authority over an account established by a Client for the purpose of holding Client Money or Client Investments, it must maintain those records mandated by Chapter 14, in respect of Client Money, and those records mandated by Chapter 15, and, if applicable, Chapter 17, in respect of Client Investments.

6.4 Investment Research and Offers of Securities

6.4.1 Application

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

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

Guidance

Investment Research is seen as a significant potential source of conflicts of interest within an Authorised Person and therefore an Authorised Person preparing or publishing investment research is expected to have adequate procedures, systems and controls to manage effectively and conflicts that arise.

6.4.2 Disclosure in Investment Research

- (a) When an Authorised Person publishes Investment Research, it must take reasonable steps to ensure that the Investment Research:

...

- (vii) if intended for use only by a Professional Client or a Market Counterparty, contains a clear warning that it should not be relied upon by or distributed to Retail Clients.

...

6.4.3 Restrictions on Publication

- (a) If an Authorised Person acts as a manager or co-manager of an initial public offering or a secondary offering, it must take reasonable steps to ensure that:

- (i) it does not publish Investment Research relating to the Investment during a Quiet Period; and
- (ii) an Investment Analyst from the Authorised Person does not make a public appearance relating to that Investment during a Quiet Period.

(b) **Guidance**

The same conflicts of interest mentioned in this section do not arise if an Investment Analyst prepares Investment Research solely for an Authorised Person's own use and not for publication. For example, if the research material is prepared solely for the purposes of the Authorised Person's proprietary trading then the use of this information would fall outside the restrictions placed on publications.

6.4.4 Restriction on Own Account Transactions

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

...

6.5 Best Execution

6.5.1 Application

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

- (i) it undertakes with a Professional Client which is a Market Counterparty;

...

6.5.2 Providing Best Execution

When an Authorised Person agrees, or decides in the exercise of its discretion, to Execute any Transaction with or for a Client in an Investment, it must provide best execution.

Guidance

An Authorised Person provides best execution if it takes reasonable care to determine the best execution available for that Investment under the prevailing market conditions and deals at a price and other conditions which are no less advantageous to that Client.

...

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

6.6 Non-market Price Transactions

6.6.1 General Prohibition

Except in relation to:

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

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

Guidance**Definition**

1. A non-market price Transaction is a Transaction where the dealing rate or price paid by the Authorised Person or its Client differs from the prevailing market rate or price (after taking into account all costs) to a material extent or the Authorised Person or its Client gives materially more or less in value than it receives in return.

...

6.7.1 Application

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

- (a) it undertakes with a Professional Client which is a Market Counterparty; or

...

6.8.1 Record Keeping – Voice and Electronic Communications

- (a) Subject to Rule 6.8.1(b), an Authorised Person must take reasonable steps to ensure that it makes and retains recordings of voice and electronic communications that are:

- (i) with a Client or with another Person in relation to a Transaction, including communications relating to the receipt, execution, arrangement of execution of Client orders and passing of related instructions; and
- (ii) made with, sent from or received on equipment either provided by the Authorised Person to an Employee or contractor or use of which by an Employee or contractor has been sanctioned or permitted by the Authorised Person.

...

- ~~(d) The effect of this Rule 6.8.1 is that an Authorised Person may conduct business over a mobile phone or other handheld electronic communication device but only if the Authorised Person is able to record such communications. Further, mere transmission of instructions by front office personnel to back office personnel within an Authorised Person would not ordinarily be subject to this Rule.~~

Guidance

1. The effect of this Rule 6.8.1 is that an Authorised Person may conduct business over a mobile phone or other handheld electronic communication device but only if the Authorised Person is able to record such communications. Further, mere transmission of instructions by front office personnel to back office personnel within an Authorised Person would not ordinarily be subject to this Rule.

- ~~4.2.~~ The effect of Rule ~~56.8.1~~(b)(iv) is to exclude from Rule 56.8.1(a) conversations or communications made by Investment Analysts, retail financial advisers, and persons carrying on back office functions.

...

6.9.1 Application

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

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

...

6.9.4 Fairly and in Due Turn

An Authorised Person must deal with ~~Own Account~~ Transactions for its own account and Client Transactions fairly and in due turn.

...

6.10 Confirmation Notes

6.10.1 Application

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

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

6.10.2 Sending Confirmation Notes

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

...

6.11.1 Application

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

- (a) undertakes with a Professional Client which is a Market Counterparty; or

...

6.11.3 Record Keeping

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

6.12 Information to prime brokerage Clients

6.12.1 An Authorised Person must make available to each of its Clients to whom it provides prime brokerage services a statement in a durable medium:

- (a) showing the value at the close of each day of the items in Rule 6.12.3 below; and

(b) detailing any other matters which that Authorised Person considers are necessary to ensure that a Client has up-to-date and accurate information about the amount of Client Money and the value of Safe Custody Assets held by that Authorised Person for it.

6.12.2 The statement must be made available to those Clients not later than the close of the next day to which it relates.

6.12.3 The statement must include:

(a) the total value of Safe Custody Assets and the total amount of Client Money held by that prime brokerage firm for a Client;

(b) the cash value of each of the following:

(i) cash loans made to that Client and accrued interest;

(ii) securities to be redelivered by that Client under open short positions entered into on behalf of that Client;

(iii) current settlement amount to be paid by that Client under any futures contracts;

(iv) short sale cash proceeds held by the Authorised Person in respect of short positions entered into on behalf of that Client;

(v) cash margin held by the Authorised Person in respect of open futures contracts entered into on behalf of that Client;

(vi) mark-to-market close-out exposure of any OTC transaction entered into on behalf of that Client secured by Safe Custody Assets or Client Money;

(vii) total secured obligations of that Client against the prime brokerage firm; and

(viii) all other Safe Custody Assets held for that Client.

(c) total collateral held by the Authorised Person in respect of secured transactions entered into under a prime brokerage agreement, including where the Authorised Person has exercised a right of use in respect of that Client's Safe Custody Assets;

(d) the location of all of a Client's Safe Custody Assets, including assets held with a sub-custodian; and

(e) a list of all the institutions at which the Authorised Person holds or may hold Client Money, including money held in Client Accounts.

Guidance

The reports required under this section must be provided to each Client in addition to any other reporting required under the Client Money Rules or the Safe Custody Rules.

...

~~7.2.3 The classes of Contracts of Insurance are set out in Chapter 1 of Part 4 of Schedule 1 of FSMR[Deleted].-~~

...

~~7.2.7 The Regulator may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.~~

Guidance

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

~~4.2.~~ The following activities will normally be considered in direct connection with or for the purposes of Insurance Business carried on by an Insurer:

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

3. The regulator may give individual guidance on other business activities that may be determined to be in direct connection with Insurance Business.

...

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

...

7.11 Insurance Monies

7.11.1 Application

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

7.11.2 General

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

...

7.11.5 Pooling Event

Following a Pooling Event, an Insurance Intermediary and Insurance Manager~~Authorised Person~~ must comply with the Client Money Distribution Rules in Rule ~~14.4~~14.13 and all Money will also be subject to such Rules in the same way as Client Money.

7.11.6 Insurance Money Segregation

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

- (a) maintain one or more separate Insurance Bank Accounts with an Eligible Bank in the U.A.E.;
- (b) ensure that each Insurance Bank Account contains in its title the name of the Authorised Person, together with the designation “Insurance Bank Account” (or “IBA”);
- (c) prior to operating an Insurance Bank Account, give written notice to, and receive written confirmation from, the Eligible Bank that the bank is not entitled to combine the Insurance Bank Account with any other account unless that account is itself an Insurance Bank Account held by the Authorised Person, or to any charge, encumbrance, lien, right of set-off, compensation or retention against monies standing to the credit of the Insurance Bank Account;
- (d) pay all Insurance Monies directly and without delay into an Insurance Bank Account;
- (e) use an Insurance Bank Account only for the following purposes:
 - (i) the receipt of Insurance Monies;
 - (ii) the receipt of such monies as may be required to be paid into the Insurance Bank Account to ensure compliance by the Authorised Person with any conditions or requirements prescribed by the Regulator;
 - (iii) the payment to Clients or to insurers of monies due under Insurance Intermediation Business transactions;

- (iv) the payment of all monies payable by the Authorised Person in respect of the acquisition of or otherwise in connection with Approved Assets;
- (v) the withdrawal of brokerage, management Fees and other income related to Insurance Intermediation Business, either in cash or by way of transfer to an account in the name of the Insurance Intermediary which is not an Insurance Bank Account, provided that no such sum may be withdrawn from the Insurance Bank Account before the time at which that amount may be brought into account as income of the Insurance Intermediary;

...

8.5 Rules Applicable to MTF Operators

8.5.1 The following rules shall not apply to MTF Operators in respect of transactions concluded under the MTF's rules between:

- (a) its members or participants; or
- (b) the MTF and its members or participants in relation to the use of the MTF:
 - (i) Rule 3.4 (*Suitability*);
 - (ii) Rule 6.5 (*Best Execution*);
 - (iii) Rule 6.7 (*Aggregation and Allocation*); and
 - (iv) Rule 12 (*Key Information and Client Agreement*),

except that members of, or participants in, the MTF ~~shall~~ must comply with such obligations with respect to their Clients when, acting on behalf of their Clients, they execute their orders through the systems of the MTF.

...

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

...

8.6.6 An OTF Operator ~~shall~~ must exercise discretion only in the following circumstances:

...

8.6.8 OTF Operators ~~shall~~ must, on request, provide the Regulator with a detailed explanation why the system does not correspond to and cannot operate as a Recognised Investment Exchange or MTF, a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more Client orders will be matched within the OTF. In addition, the OTF Operator ~~shall~~ must provide the Regulator with information explaining its use of matched principal trading.

9. CORE RULES – OPERATING A CREDIT RATING AGENCY**9.1 Application**

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

9.1.2 For the purposes of this chapter:

- (a) a Regulated Activity of Operating a Credit Rating Agency means undertaking one or more activities that involve data and information analysis relating to a Credit Rating or the evaluation, approval, issue or review of a Credit Rating;

...

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

Guidance

1. Not all Rating Subjects are bodies corporate. For example, Credit Ratings can be provided in respect of a credit commitment given by a Person, or a debt or debt-like Investment. In such instances, where a Rule in this chapter requires the Rating Subject to carry out some activity, such a reference is to be read as a reference to the Person who is responsible for obtaining the Credit Rating. Such a Person would generally be the originator, arranger or Sponsor of the relevant financial product which is being rated. The Credit Rating Agency should clearly identify the Person responsible for a Rating Subject before proceeding with its Credit Rating activities relating to that Rating Subject.

...

9.2.9 A Credit Rating Agency must assess whether existing methodologies and models for determining credit ratings of structured finance products are appropriate when the risk characteristics of the assets underlying a structured finance product change materially. In cases where the complexity or structure of a new type of structured finance product or the lack of robust data about the assets underlying the structured finance product raise serious questions as to whether the Credit Rating Agency can determine a credible credit rating for the security, Credit Rating Agency must refrain from issuing a credit rating.

...

9.5 Integrity of the Rating Process

9.5.1 A Credit Rating Agency and its Employees must comply with all applicable laws and regulations governing its activities in each jurisdiction in which it operates.

9.5.2 A Credit Rating Agency and its Employees must deal fairly and honestly with issuers, investors, other market participants, and the public.

...

9.5.4 A Credit Rating Agency and its Employees must not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. This

does not preclude a Credit Rating Agency from developing prospective assessments used in structured finance and similar transactions.

...

9.5.6 A Credit Rating Agency must institute policies and procedures that clearly specify a person responsible for a Credit Rating Agency's and its Employees' compliance with the provisions of a Credit Rating Agency's code of conduct and with applicable laws and regulations. This person's reporting lines and compensation must be independent of a Credit Rating Agency's rating operations.

9.5.7 Upon becoming aware that another Employee or entity under common control with the Credit Rating Agency is or has engaged in conduct that is illegal, unethical or contrary to the Credit Rating Agency's code of conduct, a Credit Rating Agency Employee must report such information immediately to the individual in charge of compliance or an officer of the Credit Rating Agency, as appropriate, so proper action may be taken.

Guidance

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

...

9.7.3 A Credit Rating Agency must disclose the general nature of its compensation arrangements with rated entities.

(a) Where a Credit Rating Agency receives from a rated entity compensation unrelated to its ratings service, such as compensation for consulting services, a Credit Rating Agency must disclose the proportion such non-rating Fees constitute against the Fees the Credit Rating Agency receives from the entity for ratings services.

...

9.7.4 A Credit Rating Agency and its Employees must not engage in any securities or derivatives trading presenting conflicts of interest with the Credit Rating Agency's rating activities.

9.7.5 In instances where rated entities have, or are simultaneously pursuing, oversight functions related to the Credit Rating Agency, the Credit Rating Agency must use different Employees to conduct its rating actions than those Employees involved in its oversight issues.

9.8 Analyst and Employee Independence

9.8.1 Reporting lines for Credit Rating Agency Employees and their compensation arrangements must be structured to eliminate or effectively manage actual and potential conflicts of interest.

- (a) A Credit Rating Agency's code of conduct must state that a Credit Rating Agency analyst will not be compensated or evaluated on the basis of the amount of revenue that the Credit Rating Agency derives from issuers that the analyst rates or with which the analyst regularly interacts.
 - (b) A Credit Rating Agency must conduct formal and periodic reviews of compensation policies and practices for Credit Rating Agency analysts and other Employees who participate in or who might otherwise have an effect on the rating process to ensure that these policies and practices do not compromise the objectivity of the Credit Rating Agency's rating process.
- 9.8.2 A Credit Rating Agency must not have Employees who are directly involved in the rating process initiate, or participate in, discussions regarding Ffees or payments with any entity they rate.
- 9.8.3 No Credit Rating Agency Employee may participate in or otherwise influence the determination of the Credit Rating Agency's rating of any particular entity or obligation if the Employee:
- ...
- 9.8.5 Credit Rating Agency Employees must be prohibited from soliciting money, gifts or favours from anyone with whom the Credit Rating Agency does business and must be prohibited from accepting gifts offered in the form of cash or any gifts exceeding [-].fifty U.S.Dollars.
- 9.8.6 Any Credit Rating Agency analyst who becomes involved in any personal relationship that creates the potential for any real or apparent conflict of interest (including, for example, any personal relationship with an Employee of a rated entity or agent of such entity within his or her area of analytic responsibility), must disclose such relationship to the appropriate manager or officer of the Credit Rating Agency, as determined by the Credit Rating Agency's compliance policies.
- ...
- 9.9.7 Where feasible and appropriate, prior to issuing or revising a rating, the Credit Rating Agency must inform the issuer of the critical information and principal considerations upon which a rating will be based and afford the issuer an opportunity to clarify any likely factual misperceptions or other matters that the Credit Rating Agency would wish to be made aware of in order to produce an accurate rating. A Credit Rating Agency ~~will~~ must duly evaluate the response. Where in particular circumstances the Credit Rating Agency has not informed the issuer prior to issuing or revising a rating, the Credit Rating Agency must inform the issuer as soon as practical thereafter and explain the reason for the delay.
- ...
- 9.10 Confidential Information**
- 9.10.1 A Credit Rating Agency must adopt procedures and mechanisms to protect the confidential nature of information shared with them by issuers under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially. Unless otherwise permitted by the confidentiality agreement and consistent with applicable laws or regulations, the Credit Rating Agency and its Employees must not disclose confidential information in press

releases, through research conferences, to future employers, or in conversations with investors, other issuers, other persons, or otherwise.

- 9.10.2 A Credit Rating Agency must use confidential information only for purposes related to its rating activities or otherwise in accordance with any confidentiality agreements with the issuer.
- 9.10.3 Credit Rating Agency ~~e~~Employees must take all reasonable measures to protect all property and records belonging to or in possession of the Credit Rating Agency from fraud, theft or misuse.
- 9.10.4 Credit Rating Agency Employees must be prohibited from engaging in transactions in securities when they possess confidential information concerning the issuer of such security.
- 9.10.5 In preservation of confidential information, Credit Rating Agency Employees must familiarise themselves with the internal securities trading policies maintained by their employer, and periodically certify their compliance as required by such policies.
- 9.10.6 Credit Rating Agency Employees must not selectively disclose any non-public information about rating Credit Rating Agencies or possible future rating actions of the Credit Rating Agency, except to the issuer or its designated agents.
- 9.10.7 Credit Rating Agency Employees must not share confidential information entrusted to the Credit Rating Agency with Employees of any affiliated entities that are not Credit Rating Agencies. Credit Rating Agency Employees must not share confidential information within the Credit Rating Agency except on an "as needed" basis.
- 9.10.8 Credit Rating Agency ~~e~~Employees must not use or share confidential information for the purpose of trading securities, or for any other purpose, except the conduct of the Credit Rating Agency's business.
- ...
- 9.11.3 A Credit Rating Agency must publish in a prominent position on its home webpage links to (a) its code of conduct; (b) a description of the methodologies it uses; and (c) information about ~~the~~ its historic performance data.
- ...
- 9.12.3 A Credit Rating Agency may carry out activities which are ancillary to its Credit Rating aActivities to a Rating Subject or a Related Party of the Rating Subject where it:
- (a) has a clear definition of what services it considers as ancillary activities;
 - (b) documents why the carrying on of such activities are considered not to raise any conflicts of interest with its Credit Rating aActivities; and
- ...
- 9.12.5 A Credit Rating Agency must separate operationally its Credit Rating aActivities from any ancillary services it provides. For example, rRating aAnalysts and other key individuals involved in Credit Rating aActivities must not also be involved in the provision of such services. Where a Group member provides to a Rating Subject of a Credit Rating Agency any ancillary services, the Credit Rating Agency and the Group member must not share Employees or premises to ensure operational separation.

...

9.13 Credit Rating Agency Fees

A Credit Rating Agency must not enter into Fee arrangements for providing Credit Ratings where the Fee depends on the rating outcome or on any other result or outcome of the Credit Rating Activities.

...

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

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

Guidance

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

9.15 Record keeping

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

- (a) for each Credit Rating:
 - (i) the identity of the Rating Analysts participating in the determination of the Credit Rating;
 - (ii) the identity of the individuals who have approved the Credit Rating;
 - (iii) information as to whether the Credit Rating was solicited or unsolicited;
 - (iv) information to support the Credit Rating;
 - (v) the Accounting Records relating to Fees and charges received from or in respect of the Rating Subject;
 - (vi) the internal records and files, including non-public information and working papers, used to form the basis of any Credit Rating; and
 - (vii) credit analysis and credit assessment reports including any internal records and non-public information and working papers used to form the basis of the opinions expressed in such reports;
- (b) the Accounting Records relating to Fees received from any Person in relation to services provided by the Credit Rating Agency;

- (c) the Accounting Records for each subscriber to the Credit Rating Agency's services;
- (d) the records documenting the established procedures, methodologies, models and assumptions used by the Credit Rating Agency to determine Credit Ratings; and
- (e) copies of internal and external communications, including electronic communications, received and sent by the Credit Rating Agency and its Employees that relate to Credit Rating aActivities.

...

10. CORE RULES – OPERATING A CENTRAL SECURITIES DEPOSITORY

10.1 Application and interpretation

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

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

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

~~10.2 [Deleted] Rules applicable to CSDs~~

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

- ~~(a) Rule 14.2.14 (Segregation and portability);~~
- ~~(b) Rules 14.2.1(b)(i)(B) 14.2.15(b)(i)(B), (c) and (d) (Statutory Trust);~~
- ~~(c) Rules 14.4.3 (b), (e) and (h)–(l) (Pooling and Distribution);~~
- ~~(d) Rule 14.4.6 (Failure of third parties: pooling and distribution); and~~
- ~~(e) Rule 14.4.7 (Client Money received after the Failure of a third party).~~

...

11.1.2 Executing a Transaction

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

- (a) the identity and account number of the Client for whom the Transaction was Executed, or an indication that the Transaction was for its own account ~~an Own Account Transaction~~;

...

11.1.4 Sending Confirmation Notes

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

(a) the Authorised Person's name and address;

...

(f) the price or unit price at which the Transaction was Executed, or where the order is executed in tranches the average price of the Transaction as a whole supplemented by, at the request of the Client, information about the price of each tranche of the Transaction;

...

(l) for Collective Investment Funds, a statement that the price at which the Transaction has been Executed is on a hHistoric pPrice or Forward pPrice basis, as the case may be.

Guidance

(2) In relation to (f) and (j), An Authorised Person may ~~must~~ combine items (f) and (j) in respect of a Transaction where the Client has requested a confirmation note showing a single price combining both of these items.

...

12.1.2 Core Information

(a) In the case of a Retail Client, the information for the purposes of Rule 12.1.1(a) is:

...

(iv) details of Fees, costs and other charges and the basis upon which the Authorised Person will impose those Fees, costs and other charges;

...

(vii) details of any Soft Dollar Agreement required to be disclosed under Rule 3.6; ~~and~~

(viii) key particulars of the Authorised Person's Complaints handling procedures and a statement that a copy of the procedures is available free of charge upon request in accordance with GEN 7.2.11; ~~and~~

(ix) where investment advice is provided:

(A) whether or not the advice is provided on an independent basis;

(B) whether the advice is based on a broad or on a more restricted analysis of different types of Financial Instruments and, in particular, whether the range is limited to Financial Instruments issued or provided by entities having Close Links with the Authorised Person or any other legal or economic relationships, such as contractual

relationships, so close as to pose a risk of impairing the independent basis of the advice provided;

(C) whether the Authorised Person will provide the Client with a periodic assessment of the suitability of the Financial Instruments recommended to that Client.

Guidance

For (a)(ix), investment advice is considered to be the provision of personal recommendations by an Authorised Person to a Client, either at the initiative of the Authorised Person or at the request of the Client, in respect of one or more transactions relating to Financial Instruments.

...

13.1.1 General Information

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

- (a) the number, description and value of each Investment;
- (b) the amount of cash held;
- (c) the total value of the portfolio; ~~and~~
- (d) a statement of the basis on which the value of each Investment has been calculated; and
- (e) if provided to a Retail Client, the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided upon request.

(2) Where requested by a Retail Client pursuant to Rule 13.1.1(1)(e), an Authorised Person must provide detailed information concerning management fees and costs incurred on a per Transaction basis.

13.1.2 Additional Information: Discretionary Investment Management Activities

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

- (a) a statement of which Investments, if any, were at the closing date loaned to any third party and which Investments, if any, were at that date charged to secure borrowings made on behalf of the portfolio;

...

- (f) a statement of the aggregate Fees and Charges of the Authorised Person and its Associates; and

...

14. CLIENT MONEY AND RELEVANT MONEY PROVISIONS

14.1 Client AssetsApplication

14.1.1 The provisions of this chapter are referred to as the Client Money Rules.

14.1.2 For the purposes of this Chapter:

- (a) all references to Client Money include Relevant Money;
 - (b) all references to Clients include Payment Service Users; and
 - (c) all references to Client Accounts include Payment Accounts;
- unless otherwise expressly stated.

14.1.3 References in this Chapter which require the safekeeping of Relevant Money in a Client Account do not result in a Payment Service User becoming a Client of a Payment Service Provider.

Guidance

1. Principle 9 of the Principles for Authorised Persons (*Customer assets and money*) in GEN 2.2.9 requires an Authorised Person to arrange proper protection for Clients' Assets, including Client Money and Relevant Money where the Authorised Person is responsible for them. An essential part of that protection is that an Authorised Person must properly safeguard Client Money held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business, or properly safeguard Relevant Money held in the course of the delivery of Payment Services.
2. An Authorised Person must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Money and Relevant Money as a result of, for example, the Authorised Person's or a third party's insolvency, fraud, poor administration, inadequate recordkeeping or negligence.
3. An Authorised Person that holds or controls Client Investments, Provides Custody or Arranges Custody must also comply with Chapter 15.
4. A Fund Manager, Fund Administrator, Custodian or Trustee that holds Fund Property must comply with the Fund Rules rather than the Client Money Rules.
5. An Authorised Person in Category 4, other than an Authorised Person engaged in the Regulated Activity of Operating a Private Financing Platform, must not hold or control Client Money.

14.2 General Requirements

14.2.1 An Authorised Person which holds or controls Client Money must comply with, and be able to demonstrate compliance with, the Client Money Rules in relation to that Client Money and have systems and controls in place to ensure that Client Money is identifiable and secure at all times.

14.2.2 Where the Client is a Professional Client which is a Market Counterparty, an Authorised Person engaging in Investment Business may exclude the application of the Client Money Rules but only where it has obtained the prior written consent of the Client to do so.

14.2.3 An Authorised Person which holds or controls Client Money must inform the Regulator in writing without delay if it has not complied with, or is unable in any material respect to comply with, the Client Money Rules.

Guidance

1. Client Money is held by an Authorised Person if it is:
 - (a) directly held by the Authorised Person;
 - (b) held in an account in the name of the Authorised Person; or
 - (c) held by a Person, or in an account in the name of a Person, controlled by the Authorised Person.
2. The Regulator would consider an account to be controlled by an Authorised Person if that account may be operated in accordance with the instructions of the Authorised Person, despite the account not being established in the name of the Authorised Person.

14.3 Client Money and Money controlled by an Authorised Person

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

- (a) held by an Authorised Person which is a Bank as a Deposit, provided the Authorised Person notifies the Client in writing that the Client Money is held by it as a Deposit and not as Client Money;
- (b) due and payable by the Client to the Authorised Person;
- (c) in an account in the Client's name over which the Authorised Person has a mandate or similar authority for the purpose of managing Money for such Client on a discretionary basis;
- (d) received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Person, provided the cheque or other payable order is intended to be forwarded to the third party within one day of receipt;
- (e) Cash received under a Title Transfer Collateral Agreement from a Professional Client; or
- (f) Fund Property.

14.3.2 Where the Authorised Person holds a mandate, or similar authority over an account established in the Client's own name with a third party, its systems and controls must:

- (a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Person on the use of the mandate;
- (b) include the details of the procedures and authorities for the giving and receiving of instructions under the mandate; and

- (c) ensure that all instructions related to Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Person under the mandate.

Guidance

1. All Money held or controlled by a Payment Service Provider on behalf of a Payment Service User in the course of carrying on of Payment Services is Relevant Money from the time of its receipt, except Money which is due and payable to the Authorised Person from the Payment Service User. Chapter 19 contains additional specific provisions relating to the handling of Relevant Money.
2. Pursuant to Rule 15.11.A.1, an Authorised Person may not enter into a Title Transfer Collateral Agreement with a Retail Client.

14.4 Payment of Client Money into Client Accounts

14.4.1 Where an Authorised Person holds or controls Client Money it must ensure, except where otherwise provided in these Rules, that the Client Money is paid into a Client Account within one day of receipt.

14.4.2 An Authorised Person must have procedures for identifying Client Money received by the Authorised Person, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to and recording in the Client Account. The procedures must cover Client Money received by the Authorised Person through any means.

14.4.3 Where an Authorised Person is aware that a Person may make a payment of Client Money to the Authorised Person, it must take reasonable steps:

- (a) to ensure that the Person has sufficient information of the relevant account details to be able to transfer Client Money directly to a Client Account; and
- (b) to ensure that the Authorised Person is notified of such payment as soon as reasonably practicable.

14.4.4 An Authorised Person must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it out of the Client Account without delay.

14.4.5 An Authorised Person must not hold or deposit its own Money into a Client Account, except where:

- (a) it is a minimum sum required to open the account or to keep it open;
- (b) the Money is received by way of mixed remittance, provided that Money owed to the Authorised Person is transferred out of the Client Account within one day of the day upon which the payment to the Authorised Person was due and payable;
- (c) interest credited to the account exceeds the amount payable to Clients, provided that the Money is removed within twenty days; or
- (d) it is to meet a shortfall in Client Money.

14.4.6 Where an Authorised Person deposits any Money into a Client Account, such Money is Client Money until such time as:

- (a) if it is Client Money, the Client Money is withdrawn from the Client Account in accordance with the Client Money Rules; or
- (b) if it is Relevant Money, the Relevant Money is withdrawn from the Client Account in accordance with Chapter 19.

Guidance

- 1. For the purposes of Rule 14.4.1, the Regulator would consider one day to expire at the close of business on the next business day
- 2. Regardless of what time during the day the Client Money was received by the Authorised Person, an Authorised Person which remits all Client Money to the Client or as the Client may direct within one day is not obligated to maintain a Client Money Account.
- 3. An Authorised Person may establish separate Client Accounts for individual Clients, a single Client Account where Client Money is pooled, or both.
- 4. Whenever possible the Authorised Person should seek to split a mixed remittance before crediting the Client Account.
- 5. An Authorised Person holding or controlling Relevant Money in connection with the conduct of Payment Services is expected to identify, record and reconcile such amounts in accordance with the requirements of Chapter 19.

14.5 Exceptions to holding Client Money in Client Accounts

14.5.1 The requirement for an Authorised Person to hold Client Money in a Client Account does not, subject to Rule 14.5.2, apply with respect to such Client Money:

- (a) received in the form of cheque, or other payable order, until the Authorised Person, or a Person or account controlled by the Authorised Person, is in receipt of the proceeds of that cheque;
- (b) temporarily held by an Authorised Person before forwarding to the Client or a Person nominated by the Client; or
- (c) in connection with a Delivery Versus Payment Transaction where:
 - (i) in respect of a Client purchase, Client Money from the Client will be due to the Authorised Person within one day upon the fulfilment of a delivery obligation; or
 - (ii) in respect of a Client sale, Client Money will be due to the Client within one day following the Client's fulfilment of a delivery obligation.

14.5.2 An Authorised Person must pay Client Money received by it of the type described in 14.5.1(b) or (c) into a Client Account where the Authorised Person has not fulfilled its delivery or payment obligation within three days of receipt of the Money or the Investments, unless, in the case of the Client's sale of Investments, the Authorised Person instead safeguards equivalent Client Investments at least equal to the value of such Client Money.

14.5.3 An Authorised Person must maintain adequate records of all cheques and payment orders received in accordance with Rule 14.5.1(a) including, in respect of each payment:

- (a) The date of receipt;
- (b) The name of the Client for whom payment is to be credited; and
- (c) The date when the cheque or payment order was presented to the Authorised Person's Third-Party Agent.

14.5.4 The records referred to in Rule 14.5.3 must be kept for a minimum of six years.

14.5.5 Rules 14.5.1 to 14.5.3 do not apply to Authorised Persons holding Relevant Money.

Guidance

- 1. An Authorised Person holding Relevant Money must maintain Relevant Money in a Payment Account in compliance with Chapter 19.
- 2. In accordance with Rule 15.11.A.2 Money received under the Title Transfer Collateral Agreement from a Professional Client is not Client Money.

14.6 Client Accounts

14.6.1 A Client Account is an account which:

- (a) is held with a Third-Party Agent, pursuant to Rule 14.7;
- (b) is established to hold Client Money;
- (c) is maintained in the name of:
 - (i) if a Domestic Firm, the Authorised Person; or
 - (ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Person.

14.6.2 An Authorised Person must maintain a master list of all Client Accounts. The master list must detail:

- (a) the name of the account;
- (b) the account number;
- (c) the location of the account;
- (d) the bank, its address and contact information;
- (e) the account terms and conditions;
- (f) whether the account is currently open or closed; and
- (g) the date of opening or closure.

14.6.3 The details of the master list referred to in Rule 14.6.2 must be maintained for at least six years following the closure of a Client Account.

14.7 Appointment of Third-Party Agent to hold Client Accounts

14.7.1 An Authorised Person may pay, or permit to be paid, Client Money to a Third-Party Agent only where it has undertaken a prior assessment of the suitability of that Third-Party Agent and concluded on reasonable grounds that the Third-Party Agent is suitable to hold Client Money in a Client Account.

14.7.2 When assessing the suitability of the Third-Party Agent, the Authorised Person must ensure that the Third-Party Agent will provide protections equivalent to the protections conferred by this section.

14.7.3 An Authorised Person should ensure that a Client Account maintained with a Third-Party Agent includes the words "Client Account" in its title.

14.7.4 Before depositing Client Money in a Client Account established with a Third-Party Agent, it must obtain a written acknowledgment from the Third-Party Agent stating that all Money standing to the credit of the account is held by the Authorised Person on behalf of its Clients and that the Third-Party Agent is not entitled to combine the account with any other account, or exercise any charge, mortgage, security, lien, right of set-off or combination or counterclaim against Money in that account in respect of any sum owed to it by the Authorised Person.

14.7.5 If the Third-Party Agent does not provide the acknowledgment referred to in Rule 14.7.4 within the time specified in that Rule, the Authorised Person must refrain from making further deposits of Client Money into that account maintained by the Third-Party Agent and withdraw all Client Money standing to the credit of that Client Account.

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

14.7.7 An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which the Authorised Person considers the Third-Party Agent to be suitable to hold that Client Money or Relevant Money, as applicable.

Guidance

For the purposes of the Client Money Rules, a Third-Party Agent is a bank which maintains a Client Account in the name of the Authorised Person, but identified as a Client Account. When assessing the suitability of a Third-Party Agent with which to maintain a Client Account, an Authorised Person should, at a minimum, have regard to:

- (a) its credit rating;
- (b) its capital and financial resources in relation to the amount of Client Money or Relevant Money, as applicable, held;
- (c) the insolvency regime of the jurisdiction in which it is located;
- (d) its regulatory status and history;
- (e) its Group structure;
- (f) if the Third-Party Agent is a Related Party, whether applicable insolvency laws would result in the subordination of the Authorised Person's claims in the event of the failure of the Third-Party Agent;

- (g) the amount of Client Money to be placed with the Third-Party Agent, the availability of alternative Third-Party Agents and concentration risk; and
- (h) its use of agents and service providers.

14.8 Payment of Client Money from Client Account

14.8.1 An Authorised Person must have procedures for ensuring all withdrawals from a Client Account are authorised.

14.8.1A Subject to Rule 14.8.2, Client Money must remain in a Client Account until it:

- (a) is due and payable to the Authorised Person;
- (b) is paid to the Client on whose behalf the Client Money is held;
- (c) is paid in accordance with a Client instruction on whose behalf the Client Money is held;
- (d) is required to meet the payment obligations of the Client on whose behalf the Client Money is held;
- (e) becomes held by the Authorised Person pursuant to a title transfer collateral arrangement;
- (f) becomes held by the Authorised Person in its capacity as a bank as a Deposit;
or
- (g) is paid out in circumstances that are otherwise authorised by the Regulator.

14.8.2 Client Money paid out by way of cheque or other payable order under Rule 14.8.1A(b) or (c) must remain in a Client Account until the cheque or payable order is presented to and cleared by the recipient's bank.

14.8.3 An Authorised Person must not use Client Money belonging to one Client to satisfy an obligation of another Client.

14.8.4 An Authorised Person must have systems and controls to ensure that no off-setting or debit balances occur on Client Accounts.

Guidance

The effect of Rule 14.8.3 is that an Authorised Person seeking to remedy a shortfall arising from a client debit balance would be required to address any shortfall with its own money.

14.9 Client Disclosure

14.9.1 Before, or as soon as reasonably practicable after, an Authorised Person receives Client Money, it must disclose to that Client in writing:

- (a) the basis and any terms governing the way in which the Client Money will be held, including whether it is to be pooled or held in a separate Client Account;
- (b) that the Client is subject to the protection conferred by the Client Money Rules and as a consequence:

- (i) this Money will be held separate from Money belonging to the Authorised Person; and
- (ii) in the event of the Authorised Person's insolvency, winding up or other Pooling Event stipulated by the Regulator, the Client's Money will be subject to the Client Money Distribution Rules;
- (c) that the Authorised Person or its Nominee Company, as applicable, will hold the Client's Money in trust, in accordance with the terms set out in Rule 14.12;
- (d) whether interest is payable to the Client and, if so, on what terms;
- (e) if applicable, that the Client Money may be held in a jurisdiction outside the Abu Dhabi Global Market, the identity of that jurisdiction;
- (f) if applicable, that market practices, insolvency and the legal regime applicable in the jurisdiction identified in (d) may differ from the regime applicable in the Abu Dhabi Global Market;
- (g) the identity of the Third-Party Agent;
- (h) if applicable, details about how any Client Money arising out of Islamic Financial Business is to be held;
- (i) if applicable, that the Authorised Person holds or intends to hold the Client Money in a Client Account with a Third-Party Agent which is in the same Group as the Authorised Person; and
- (j) details of any rights which the Authorised Person may have to realise Client Money held on behalf of the Client in satisfaction of a default by the Client or otherwise.

14.9.2 In the event of a material change to the information provided to the Client in accordance with Rule 14.9.1, an Authorised Person must disclose the details of such change to the Client in writing.

14.9.3 Before an Authorised Person holds or controls Client Money on behalf of a Professional Client which is a Market Counterparty that will not be subject to these Client Money Rules, it must disclose to the Client in writing, and obtain the Client's written acknowledgment, that:

- (a) the protections conferred by the Client Money Rules do not apply to such Money;
- (b) such Client Money may be comingled with Money belonging to the Authorised Person and may be used by the Authorised Person in the course of the Authorised Person's business; and
- (c) following any Pooling Event it will be an unsecured creditor.

14.10 Client Reporting

14.10.1 In relation to a Client to whom the Client Money Rules are applicable, an Authorised Person conducting Investment Business must send a statement:

- (a) to a Retail Client at least monthly; or

(b) to a Professional Client, at other intervals as agreed in writing with the Professional Client.

14.10.2 The statement required by Rule 14.10.1 must include:

- (a) the Client's total Client Money balances held by the Authorised Person reported in the currency in which the Client Money is held, or the relevant exchange rate if not reported in the currency in which the Money is held;
- (b) the amount, date and value of each credit and debit paid into and out of the account since the previous statement; and
- (c) any interest earned or charged on the Client Account since the previous statement.

14.10.3 The statement sent to the Client in accordance with Rule 14.10.2 must be prepared within one calendar month of the statement date.

Guidance

An Authorised Person conducting the Regulated Activity of Payment Services as a Payment Service Provider must report to Payment Service Users in accordance with Chapter 19.

14.11 Reconciliation

14.11.1 An Authorised Person conducting Investment Business must maintain adequate systems and controls to ensure that accurate reconciliations of Client Accounts are carried out as regularly as necessary but at least every calendar month.

14.11.2 The reconciliation called for in Rule 14.11.1 must include:

- (a) a full list of individual Client credit ledger balances, as recorded by the Authorised Person;
- (b) a full list of individual Client debit ledger balances, as recorded by the Authorised Person;
- (c) a full list of unpresented cheques and outstanding lodgements;
- (d) a full list of Client Account cash book balances; and
- (e) formal statements from Third-Party Agents showing account balances as at the date of reconciliation.

14.11.3 An Authorised Person must:

- (a) reconcile the individual Client credit ledger balances, Client Account cash book balances, and the Third-Party Agent Client Account balances;
- (b) check that the balance in the Client Accounts as at the close of business on the previous day was at least equal to the aggregate balance of individual Client credit ledger balances as at the close of business on the previous day; and
- (c) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting

systems of the Third-Party Agent and the Authorised Person, are investigated and, where applicable, corrective action is taken as soon as possible.

14.11.4 An Authorised Person must perform the reconciliations in Rule 14.11.3 within ten days of the date to which the reconciliation relates.

14.11.5 When performing reconciliations, an Authorised Person must maintain a clear separation of duties to ensure that an Employee with responsibility for operating Client Accounts, or an Employee that has the authority to make payments, does not perform the reconciliations under Rule 14.11.3.

14.11.6 Reconciliation performed in accordance with Rule 14.11.3 must be reviewed by a member of the Authorised Person who has adequate seniority.

14.11.7 The individual referred to in Rule 14.11.6 must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

14.11.8 An Authorised Person must notify the Regulator without undue delay where there has been a material discrepancy with the reconciliation which has not been rectified.

14.11.9 Records under Rule 14.11 must be kept for a minimum of six years.

Guidance

1. A material discrepancy includes multiple small discrepancies which occur over time which have a cumulative effect of being material.
2. An Authorised Person engaged in Investment Business whose Financial Service Permission entitles them to hold Client Money must also arrange for a Client Money Auditor's Report to be submitted to the Regulator on an annual basis in accordance with GEN 6.6.6.

14.12 Deemed Trusts

14.12.1 An Authorised Person receives and holds Client Money as trustee in accordance with the following trusts:

- (a) where an Authorised Person has established one or more separate Client Accounts to hold Client Money for one or more individual Clients, subject to (c), the Client Money in each separate Client Account is held for the Clients of the Authorised Person for whom such money is held, according to their respective interests in it
- (b) for each Client Account which an Authorised Person maintains a general pool of Client Money, subject to (c), the Authorised Person holds such Client Money in trust for the Clients for whom that pooled money is held, according to their respective interests in it;
- (c) for each trust, for the payment of the costs properly attributable to the distribution of the Client Money in accordance with (a) or (c); and
- (d) after all valid claims and costs under (a) to (c) have been met, for the Authorised Person itself.

14.13 Client Money Distribution Rules

- 14.13.1 To the extent that the rules in this section ("the Client Money Distribution Rules") are inconsistent with section 225 of the Insolvency Regulations, these Rules will prevail.
- 14.13.2 If an Authorised Person becomes insolvent, or a Pooling Event Occurs, the available funds in each Client Account must be distributed in accordance with Rule 14.13.4.
- 14.13.3 A Pooling Event occurs:
- (a) on the Failure of an Authorised Person;
 - (b) on the Failure of a Third-Party Agent;
 - (c) where the Authorised Person has failed to perform reconciliations as required under Rule 14.11, or claims of Client against Money held in the Client Account cannot be identified and allocated in the records of the Authorised Person;
 - (d) on the vesting of assets in a trustee in accordance with an Assets Requirement imposed under section 38 of FSMR; or
 - (e) where the Regulator makes an order or decision to this effect under FSMR.
- 14.13.4 A pooling event under Rule 14.13.3(c) does not occur when the Authorised Person has notified the Regulator in accordance with Rule 14.11.8 and, in the Authorised Person is taking steps, in consultation with the Regulator, to rectify those records and there are reasonable grounds to conclude that the records will be capable of reconciliation within a reasonable period.

Guidance

Where multiple Third-Party Agents have been engaged by an Authorised Person, the Failure of one Third-Party Agent will not trigger the obligation to distribute all Client Money to Clients in respect of Client Accounts operated by Third-Party Agents which have not Failed, unless the Authorised Person has also failed.

- 14.13.5 Following a Pooling Event, an Authorised Person must liquidate all Collateral held by the Authorised Person and distribute Client Money in the following order of priorities:
- (a) first, in relation to Client Money held in a Client Account, or Client Money that should be held in a Client Account, claims relating to that Money must be paid to each Client for whom Money was placed, or intended to be placed, in that Client Account, in full or, where insufficient funds are held in the Client Account, proportionately, in accordance with each Client's valid claim over that Money;
 - (b) _____
 - (c) second, upon satisfaction of all claims in (a), in the event of:
 - (i) the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy over the Authorised Person, payment must be made in accordance with the Insolvency Regulations; or
 - (ii) all other Pooling Events where no liquidator, receiver or administrator has been appointed in respect of the Authorised Person, payment must be made in accordance with the direction of the Regulator.

14.3.6 Where, after the Failure of an Authorised Person, the amount of Client Money in a Client Account is insufficient to satisfy the claims of all Clients in full in respect of that Money, or not being immediately available to satisfy such claims, a Client may claim for any shortfall against all other Money held by the Authorised Person in its own account. For that claim, the Client will be an unsecured creditor of the Authorised Person.

Guidance

1. This section seeks to facilitate the timely return of Client Money to Clients in the event of the Failure of an Authorised Person or a Third-Party Agent at which the Authorised Person holds Client Money.
2. A Pooling Event triggers a notional pooling of all Client Money in every type of Client Account, and the obligation to distribute it in accordance with Rule 14.13.5. In such event, Clients for whom Money was placed into a specific Client Account will only be entitled to a claim against Money held in such account, and not in any other account. Money held in one Client Account may not be used to fund shortfalls of Money which may exist in respect of other Client Accounts.
3. Following a Pooling Event, an Authorised Person must use the balance in each Client Account to satisfy claims of Deemed Trust beneficiaries made in accordance with Rule 14.12. To the extent that following the Failure of the Authorised Person there remains a shortfall with which to satisfy claims of Clients for whom Money had been held by the Authorised Person, the Authorised Person is liable to fund such shortfall from its own Money.
4. When Client Money is transferred to a Third Party Agent, an Authorised Person continues to owe a fiduciary duty to the Client. However, an Authorised Person will not be held responsible for a shortfall in Client Money arising from the Failure of the Third Party Agent if it has complied with those duties by showing proper care and complying with Rules 14.6 and 14.7.
4. Relevant Money held by an Authorised Person conducting Payment Services must be treated in the same manner as Client Money pursuant to the Client Money Distribution Rules, in terms of its segregation for the purposes of distribution to Payment Service Users following a Pooling Event. Distribution of Relevant Money subject to a Deemed Trust is intended to occur either in accordance with the balances in the respective Payment Accounts of Payment Service Users, or alternatively to be used for the purpose of redemption of Stored Value held by Payment Service Users.

~~14.1.1 Application~~

~~This section applies to an Authorised Person which:~~

- ~~(a) holds or controls Client Assets; or~~
- ~~(b) Provides Custody or Arranges Custody; or~~
- ~~(c) holds or controls Relevant Money.~~

14.1.2 [Deleted]

Guidance

- ~~1. Principle 9 of the Principles for Authorised Persons (Customer assets and money) in GEN 2.2.9 requires an Authorised Person to arrange proper protection for Clients' Assets and Relevant Money where the Authorised Person is responsible for them. An essential part of that protection is that an Authorised Person must properly safeguard Client Assets held or controlled on behalf of a Client in the course of, or in connection with, the carrying on of Investment Business, or properly safeguard Relevant Money in the course of the delivery of Payment Services, in or from the Abu Dhabi Global Market.~~
- ~~2. An Authorised Person must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of Client Assets and Relevant Money, or of rights in connection with Client Assets and Relevant Money, as a result of, for example, the Authorised Person's or a third party's insolvency, fraud, poor administration, inadequate recordkeeping or negligence.~~
- ~~3. For the purposes of interpretation of this Chapter by an Authorised Person engaging in Payment Services as part of undertaking the Regulated Activity of Providing Money Services, only those Rules which apply to Relevant Money shall be applicable. References which require the safekeeping of Relevant Money in a Client Account do not result in a Payment Service User becoming a Client of a Payment Service Provider.~~

14.1.3 General Requirements

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

14.1.4 Holding or Controlling Client Assets or Relevant Money

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

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

Guidance

- 1. — The Regulator would consider a Person to be controlled by an Authorised Person if that Person is inclined to act in accordance with the instructions of the Authorised Person.
- 2. — The Regulator would consider an account to be controlled by an Authorised Person if that account is operated in accordance with the instructions of the Authorised Person.

14.2 — Client Money and Relevant Money Rules

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

- (a) — held by the Authorised Person acting as a Bank, as a deposit on its own books, provided the Authorised Person notifies the Client in writing that the Client Money is held by it as a Bank and not as Client Money;
- (b) — due and payable by the Client to the Authorised Person;
- (c) — in an account in the Client's name over which the Authorised Person has a mandate or similar authority and who is in compliance with these Rules;
- (d) — received in the form of a cheque, or other payable order, made payable to a third party other than a Person or account controlled by the Authorised Person, provided the cheque or other payable order is intended to be forwarded to the third party within one Business Day of receipt; or
- (e) — Fund Property of a Fund.

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

14.2.2 [Deleted]

Guidance

- 1. — The exemption in Rule 14.2.1(a) does not apply to Money which is held in a Client Account with a third party i.e. not held in an account with the Authorised Person itself.

- ~~2. Pursuant to Rule 14.2.1(b), examples of Money which is due and payable to an Authorised Person include Money which is:
 - ~~(i) paid by the way of brokerage, fees and other charges to the Authorised Person or where the Authorised Person is entitled to deduct such remuneration from the Client Money held or controlled;~~
 - ~~(ii) paid by the Authorised Person in relation to a Client purchase or in settlement of a margin payment in advance of receiving a payment from the Client; or~~
 - ~~(iii) owed by the Client to the Authorised Person in respect of unpaid purchases by or for the Client if delivery of Investments has been made to the Client or credited to his account.~~~~
- ~~3. The Fund Rules contain specific provisions relating to the handing of Fund Property and also provisions relating to a Fund Administrator holding or controlling monies or assets belonging to third parties.~~
- ~~4. Chapter 19 also contains specific provisions relating to the handling of Relevant Money by an Authorised Person conducting Payment Services.~~

~~14.2.3 Holding or Controlling Client Money or Relevant Money~~

- ~~(a) An Authorised Person in Category 4, other than an Authorised Person engaged in the Regulated Activity of Operating a Private Financing Platform, must not hold Client Money.~~
- ~~(b) An Authorised Person which holds or controls Client Money for a Client or Relevant Money for a Payment Service User must comply with these Client Money Rules, and also the specific provisions in Chapter 19 relating to Relevant Money, as applicable.~~
- ~~(c) Where the Client is a Market Counterparty, an Authorised Person engaging in Investment Business may exclude the application of the Client Money Rules but only where it has obtained the prior written consent of the Market Counterparty to do so.~~
- ~~(d) An Authorised Person which holds or controls Client Money must arrange for a Client Money Auditor's Report to be submitted to the Regulator on an annual basis.~~

~~14.2.4 Payment of Client Money or Relevant Money into Client Accounts~~

- ~~(a) Subject to the requirements in Chapter 19 in relation to Payment Services, where an Authorised Person holds or controls Client Money or Relevant Money it must ensure, except where otherwise provided in these Rules, that the Client Money and Relevant Money is paid into one or more Client Accounts within one Business Day of receipt.~~
- ~~(b) An Authorised Person must not hold or deposit its own Money into a Client Account, except where:
 - ~~(i) it is a minimum sum required to open the account, or to keep it open;~~
 - ~~(ii) the Money is received by way of mixed remittance, provided the Authorised Person transfers out that part of the payment which is not Client Money or~~~~

- ~~Relevant Money within one Business Day of the day on which the Authorised Person would normally expect the remittance to be cleared;~~
- ~~(iii) interest credited to the account exceeds the amount payable to Clients or Payment Service Users, as applicable, provided that the Money is removed within twenty Business Days; or~~
 - ~~(iv) it is to meet a shortfall in Client Money or Relevant Money.~~
- ~~(c) Where an Authorised Person deposits any Money into a Client Account, such Money is Client Money or Relevant Money, as applicable, until such time as the Money is withdrawn from the Client Account in accordance with the Client Money Rules or the requirements of Chapter 19 in the case of an Authorised Person conducting Payment Services.~~
- ~~(d) An Authorised Person must maintain systems and controls for identifying Money which must not be in a Client Account and for transferring it out of the Client Account without delay.~~
- ~~(e) Where an Authorised Person is aware that a Person may make a payment of Client Money or Relevant Money to the Authorised Person, it must take reasonable steps:~~
- ~~(i) to ensure that the Person has sufficient information of the relevant account details to be able to transfer Client Money or Relevant Money, as applicable, directly to a Client Account, or otherwise to enable the Authorised Person to identify the Client Money or Relevant Money, as applicable; and~~
 - ~~(ii) to ensure that the Authorised Person is notified by that Person of such payment as soon as reasonably practicable.~~
- ~~(f) An Authorised Person must have procedures for identifying Client Money and Relevant Money received by the Authorised Person, and for promptly recording the receipt of the Money either in the books of account or a register for later posting to and recording in the Client Account, or as otherwise specified in Chapter 19 of these Rules. The procedures must cover Client Money or Relevant Money, as applicable, received by the Authorised Person through any means.~~

Guidance

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

14.2.5 Client Accounts

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

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

Guidance

- ~~1. An Authorised Person holds all Client Money or Relevant Money, as applicable, in Client Accounts for its Clients as part of a common pool of money so those particular Clients or Payment Service Users, as applicable, do not have a claim against a specific sum in a specific account; they only have a pro rata claim to the Client Money or Relevant Money, as applicable, in general to which a particular Statutory Trust relates, as one of the beneficiaries of such Statutory Trust. The purpose of controlling or holding Client Money or Relevant Money, as applicable, in a Client Account is to ensure that Money belonging to Clients or Payment Service Users, as applicable, is segregated and readily identifiable from Money belonging to the Authorised Person, such that, following a Pooling Event, Clients or Payment Service Users, as applicable, will have a joint property interest in the Client Money or Relevant Money, as applicable, in proportion to each Client's or Payment Service Users' entitlement in the Statutory Trust.~~
- ~~2. Alternatively, an Authorised Person may hold or control Client Money belonging to a Client in a Client Account constituting a Statutory Trust solely for that Client i.e. a Designated Client Account or Designated Client Fund Account. An Authorised Person holds Client Money in Designated Client Accounts or Designated Client Fund Accounts for those Clients that requested their Client Money be part of a specific pool of money, so those particular Clients have a property interest in relation to a specific sum in a specific account constituting a~~

~~Statutory Trust; they do not have a claim to the Client Money even if a Primary Pooling Event occurs (as described in Rule 14.4.2).~~

- ~~3. A Designated Client Fund Account may be used for a Client only where that Client has consented to the use of that account and all other Designated Client Fund accounts which may be pooled with it. For example, a Client who consents to the use of bank A and bank B should have Client Money related to it held in a different Designated Client Fund account at bank B from a Client who has consented to the use of banks B and C.~~
- ~~4. A Primary Pooling Event triggers a notional pooling of all the Client Money related to each Statutory Trust. The obligation to distribute Client Money or Relevant Money, as applicable, following a Pooling Event is described in the Client Money Distribution Rules.~~

~~14.2.6 Exceptions to Holding Client Money in Client Accounts~~

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

- ~~(e) Cash held by an Authorised Person that is a bank as a deposit in its capacity as a bank is not Client Money.~~
- ~~(f) Cash received under a title transfer collateral arrangement from a Market Counterparty or Professional Client is not Client Money.~~

~~14.2.7 Appointment of a Third Party Agent~~

- ~~(a) An Authorised Person may pay, or permit to be paid, Client Money or Relevant Money, as applicable, to a Third Party Agent in accordance with Rule 14.2.1(a) only where it has undertaken a prior assessment of the suitability of that Third Party Agent and concluded on reasonable grounds that the Third Party Agent is suitable to hold Client Money or Relevant Money, as applicable, in a Client Account.
 - ~~(i) When assessing the suitability of the Third Party Agent, the Authorised Person must ensure that the Third Party Agent will provide protections equivalent to the protections conferred by this section.~~
 - ~~(ii) An Authorised Person must have systems and controls in place to ensure that the Third Party Agent remains suitable.~~~~
- ~~(b) An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which the Authorised Person considers the Third Party Agent to be suitable to hold that Client Money or Relevant Money, as applicable.~~
- ~~(c) When assessing the suitability of a Third Party Agent, an Authorised Person must have regard to:
 - ~~(i) its credit rating;~~
 - ~~(ii) its capital and financial resources in relation to the amount of Client Money or Relevant Money, as applicable, held;~~
 - ~~(iii) the insolvency regime of the jurisdiction in which it is located;~~
 - ~~(iv) its regulatory status and history;~~
 - ~~(v) its Group structure; and~~
 - ~~(vi) its use of agents and service providers.~~~~

~~14.2.8 Payment of Client Money or Relevant Money to a Third Party Agent~~

- ~~(a) Subject to (d), an Authorised Person may pass, or permit to be passed, a Segregated Client's Money to a Third Party Agent only if:
 - ~~(i) the Client Money is to be used in respect of a Transaction or series of Transactions for that Client;~~
 - ~~(ii) the Client Money is to be used to meet an obligation of that Client; or~~
 - ~~(iii) the Third Party Agent is a Bank or an Authorised Person which is authorised to accept or take Deposits.~~~~

- ~~(b) In respect of (a)(i) and (ii), an Authorised Person must not hold any excess Client Money with the Third Party Agent longer than necessary to effect a Transaction or satisfy the Client's obligation.~~
- ~~(c) When an Authorised Person opens a Client Account with a Third Party Agent it must obtain, within a twenty Business Day period, a written acknowledgement from the Third Party Agent stating that:
 - ~~(i) all Money standing to the credit of the account is held by the Authorised Person as agent and that the Third Party Agent is not entitled to combine the account with any other account or to exercise any charge, mortgage, security, lien, right of set-off or combination or counterclaim against Money in that account in respect of any sum owed to it on any other account of the Authorised Person; and~~
 - ~~(ii) the title of the account includes the words "Client Account" as required under Rule 14.2.1(a)(iv).~~~~
- ~~(d) If the Third Party Agent does not provide the acknowledgement referred to in (c) within a twenty Business Day period, the Authorised Person must refrain from making further deposits of Client Money or Relevant Money, as applicable, with that Third Party Agent and withdraw any Client Money or Relevant Money, as applicable, standing to the credit of that Client Account.~~

Guidance

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

14.2.9 Payment of Client Money or Relevant Money from Client Accounts

- ~~(a) An Authorised Person must have procedures for ensuring all withdrawals from a Client Account are authorised.~~
- ~~(b) Subject to (c), a Segregated Client's Client Money must remain in a Client Account until it is:
 - ~~(i) due and payable to the Authorised Person;~~
 - ~~(ii) paid to the Client on whose behalf the Client Money is held;~~
 - ~~(iii) paid in accordance with a Client instruction on whose behalf the Client Money is held;~~
 - ~~(iv) required to meet the payment obligations of the Client on whose behalf the Client Money is held;~~
 - ~~(v) becomes held by the Authorised Person pursuant to a title transfer collateral arrangement;~~
 - ~~(vi) becomes held by the Authorised Person in its capacity as a banker as a deposit; or~~
 - ~~(vii) paid out in circumstances that are otherwise authorised by the Regulator.~~~~

- ~~(c) Client Money paid out by way of cheque or other payable order under (b) must remain in a Client Account until the cheque or payable order is presented to the Client's bank and cleared by the paying agent.~~
- ~~(d) An Authorised Person must not use Client Money belonging of one Client to satisfy an obligation of another Client.~~

Guidance

- ~~1. The effect of (d) is that an Authorised Person would be required to deposit its own Money into a Client Account to remedy a shortfall arising from a Client debit balance.~~
- ~~2. An Authorised Person must have a system for ensuring no off-setting or debit balances occur on Client Accounts.~~

14.2.10 Client Disclosure

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

~~close out or liquidate contracts or positions in respect of any of the Client's Investments.~~

14.2.11 ~~Client Reporting~~

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

Guidance

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

14.2.12 ~~Reconciliation~~

- ~~(a) An Authorised Person conducting Investment Business must maintain a system to ensure that accurate reconciliations of the Client Accounts are carried out as regularly as necessary but at least every calendar month.~~
- ~~(b) The reconciliation must include:
 - ~~(i) a full list of individual Segregated Client credit ledger balances, as recorded by the Authorised Person;~~
 - ~~(ii) a full list of individual Segregated Client debit ledger balances, as recorded by the Authorised Person;~~
 - ~~(iii) a full list of un-presented cheques and outstanding lodgements;~~
 - ~~(iv) a full list of Client Account cash book balances; and~~
 - ~~(v) formal statements from Third Party Agents showing account balances as at the date of reconciliation.~~~~
- ~~(c) An Authorised Person must:
 - ~~(i) reconcile the individual credit ledger balances, Client Account cash book balances, and the Third Party Agent Client Account balances;~~~~

- ~~(ii) — check that the balance in the Client Accounts as at the close of business on the previous Business Day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and~~
- ~~(iii) — ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the Third Party Agent and the Authorised Person, are investigated and, where applicable, corrective action is taken as soon as possible.~~
- ~~(d) — An Authorised Person must perform the reconciliations in (c) within ten Business Days of the date to which the reconciliation relates.~~
- ~~(e) — When performing the reconciliations, an Authorised Person must:
 - ~~(i) — include in the credit ledger balances:
 - ~~(A) — unallocated Client Money;~~
 - ~~(B) — dividends received and interest earned and allocated;~~
 - ~~(C) — sale proceeds which have been received by the Authorised Person and the Client has delivered the Investments or the Authorised Person holds or controls the Investment; and~~
 - ~~(D) — Money paid by the Client in respect of a purchase where the Authorised Person has not remitted the Money to the counterparty or delivered the Investment to the Client; and~~~~
 - ~~(ii) — deduct from the credit ledger balances:
 - ~~(A) — Money owed by the Client in respect of unpaid purchases by or for the Client if delivery of those Investments has been made to the Client; and~~
 - ~~(B) — Money remitted to the Client in respect of sales transactions by or for the Client if the Client has not delivered the Investments.~~~~~~
- ~~(f) — When performing reconciliations, an Authorised Person must maintain a clear separation of duties to ensure that an employee with responsibility for operating Client Accounts, or an employee that has the authority to make payments, does not perform the reconciliations under (a) to (d).~~
- ~~(g) — Reconciliation performed in accordance with (a) to (d) must be reviewed by a member of the Authorised Person who has adequate seniority.~~
- ~~(h) — The individual referred to in (g) must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.~~
- ~~(i) — The Authorised Person must notify the Regulator where there has been a material discrepancy with the reconciliation which has not been rectified.~~
- ~~(j) — A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.~~

14.2.13 Auditor's Reporting Requirements

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

14.2.14 Segregation and portability

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

14.2.15 Statutory Trusts

- ~~(a) An Authorised Person receives and holds Client Money or Relevant Money, as applicable, as trustee in accordance with the following requirements.~~
- ~~(b) The requirements in (a) are:
 - ~~(i) for the purposes of and on the terms of the Client Money Rules and the Client Money Distribution Rules;~~~~

- ~~(A) where an Authorised Person maintains only a single Statutory Trust as a general pool of Client Money or Relevant Money, as applicable, subject to (ii), for the Clients or Payment Service Users for whom that money is held, according to their respective interests in it;~~
- ~~(B) where an Authorised Person has established one or more separate Statutory Trusts of Client Money, subject to (ii), each separate Statutory Trust is held for the Clients of the Authorised Person who are beneficiaries of that specific Statutory Trust according to their respective interests in it;~~
- ~~(ii) for the payment of the costs properly attributable to the distribution of the Client Money or Relevant Money, as applicable, in accordance with (i), if such distribution takes place following the Failure of the Authorised Person; and~~
- ~~(iii) after all valid claims and costs under (i) to (ii) have been met, for the Authorised Person itself.~~
- ~~(c) In respect of Authorised Persons conducting Investment Business, the beneficiaries of each separate Statutory Trust are those Clients:
 - ~~(i) to whom the Authorised Person has delivered a Statutory Trust disclosure document under Rule (e);~~
 - ~~(ii) for whom the Authorised Person maintains, previously maintained or is in the process of establishing a margined transaction(s) in the relevant Client Account at the relevant Recognised Clearing House or Remote Clearing House;~~
 - ~~(iii) who are interested in a Designated Client Fund Account or Designated Client Account; or~~
 - ~~(iv) to whom any Client Equity Balance or other Client Money is required to be segregated for the Client by the Authorised Person in respect of the margined transactions under (ii) from that separate Statutory Trust.~~~~
- ~~(d) An Authorised Person which is subject to the Client Money Rules receives and holds Client Money or Relevant Money, as applicable, as trustee on the terms in Rule (d), subject to its obligations to hold Client Money as trustee.~~

~~14.2.16 Primary Pooling Event~~

~~Following a Primary Pooling Event, an Authorised Person must comply with Rule 14.3.7 and all Client Money or Relevant Money, as applicable, will be subject to such Rules.~~

~~14.2.17 Client Disclosure~~

- ~~(a) If an Authorised Person holds or controls money for a Market Counterparty which is not subject to these Client Money Rules, it must disclose to that Market Counterparty in writing that:
 - ~~(i) the protections conferred by the Client Money Rules do not apply to such money;~~~~

- ~~(ii) — such money may be mixed with money belonging to the Authorised Person, and may be used by the Authorised Person in the course of the Authorised Person's business; and~~
- ~~(iii) — following a Pooling Event, it will be an unsecured creditor.~~
- ~~(b) — The Authorised Person must obtain that Market Counterparty's written acknowledgement of the disclosures made prior to holding or controlling Client Money for that Market Counterparty.~~

~~14.2.18 — Record Keeping~~

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

~~14.2.19 — Notification of Failure to Comply~~

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

14.3 — Client Investments

~~14.3.1 Application~~

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

~~(iii) — Arranging Custody~~

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

~~14.3.2 Holding Collateral~~

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

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

- ~~(j) An Authorised Person holding Client's Collateral must send a statement every six months to the Client.~~
- ~~(k) An Authorised Person must reconcile the Client's Collateral in accordance with Rule 15.9.~~

~~14.3.3 Information to prime brokerage Clients~~

- ~~(a) An Authorised Person must make available to each of its Clients to whom it provides prime brokerage services a statement in a durable medium:
 - ~~(i) showing the value at the close of each Business Day of the items in Rule 14.3.4; and~~
 - ~~(ii) detailing any other matters which that Authorised Person considers are necessary to ensure that a Client has up-to-date and accurate information about the amount of Client Money and the value of Safe Custody Assets held by that Authorised Person for it.~~~~
- ~~(b) The statement must be made available to those Clients not later than the close of the next Business Day to which it relates.~~

~~14.3.4 The statement must include:~~

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

- ~~(d) — the location of all of a Client's Safe Custody Assets, including assets held with a sub-custodian; and~~
- ~~(e) — a list of all the institutions at which the Authorised Person holds or may hold Client Money, including money held in Client Accounts.~~

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

~~14.3.6 Record Keeping~~

- ~~(a) — An Authorised Person must maintain records which enable the Authorised Person to demonstrate compliance with this section; and which enable the Authorised Person to demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.~~
- ~~(b) — Records must be kept for a minimum of six years.~~

~~14.3.7 Notification of Failure to Comply~~

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

14.4 — Client Money and Relevant Money Distribution Rules

~~14.4.1 Application~~

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

Guidance

- ~~1. — This section seeks to facilitate the timely return of Client Money to Clients or Relevant Money to Payment Service Users, as applicable, in the event of the Failure of an Authorised Person or third party at which the Authorised Person holds Client Money or Relevant Money, as applicable.~~
- ~~2. — Following a Pooling Event, an Authorised Person must sell all non-cash assets representing the proceeds of, or directly traceable from, Client Money and use the proceeds of the sale to satisfy claims of Statutory Trust beneficiaries made in accordance with this chapter.~~
- ~~3. — Relevant Money held by an Authorised Person conducting Payment Services is intended to be treated in the same manner as Client Money pursuant to the Client Money Distribution Rules, in terms of its segregation for the purposes of distribution to Payment Service Users following a Primary Pooling Event or a Secondary Pooling Event. Distribution of Relevant Money subject to a Statutory Trust is intended to occur either in accordance with the balances in the respective Payment Accounts of Payment Service Users, or alternatively to be used for the purpose of redemption of Stored Value held by Payment Service Users.~~

14.4.2 Primary Pooling Events

- (a) ~~If the Authorised Person becomes insolvent, and there is (for whatever reason) a shortfall in Client Money or Relevant Money, as applicable, in a particular Statutory Trust, the available funds will be distributed in accordance with the Client Money Distribution Rules.~~
- (b) ~~A Primary Pooling Event occurs:~~
- ~~(i) on the Failure of an Authorised Person;~~
 - ~~(ii) on the vesting of assets in a trustee in accordance with an Assets Requirement imposed under section 38 of FSMR;~~
 - ~~(iii) if the Regulator makes an order or decision to this effect under FSMR; or~~
 - ~~(iv) when the Authorised Person notifies, or is in breach of its duty to notify, the Regulator, in accordance with Rules 14.2.1(i), 14.2.19, 14.3.7, 15.9.5 and 16.2.15 that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a Secondary Pooling Event.~~
- (c) ~~Rule (b)(iv) does not apply so long as:~~
- ~~(i) the Authorised Person is taking steps, in consultation with the Regulator, to establish those records; and~~
 - ~~(ii) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.~~

Guidance

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

14.4.3 Pooling and distribution of Client Money

- (a) ~~If a Primary Pooling Event occurs, an Authorised Person must comply with (b) to (g).~~
- (b) ~~The following Client Money is included in a separate Statutory Trust under Rule 14.2.1(d):~~
- ~~(i) the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person relating to that separate Statutory Trust; and~~
 - ~~(ii) the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person relating to that separate Statutory Trust, except in respect of Client Money held in a Client Account at a Recognised Clearing House, a Remote Clearing House or a Clearing Member which is, in either case, held as part of a Clearing Member Client Contract under FSMR;~~
- (c) ~~In respect of the general Statutory Trust (i.e., the Statutory Trust in respect of the general pool of Client Money held for all Clients of the Authorised Person or held for residual Clients not interested in a Designated Client Account, Designated~~

~~Client Fund Account or specific Statutory Trust under Rule 14.2.14), the following is treated as a single notional pool of Client Money for the beneficiaries of the general pool:~~

- ~~(i) — the Authorised Person's receivables in respect of any Client Money held in any Client Account of the Authorised Person;~~
- ~~(ii) — the Authorised Person's receivables in respect of any Client Money held in a Client Account of the Authorised Person, except for Client Money held in a Client Account at a Recognised Clearing House or Remote Clearing House, or a Clearing House which is, in either case, held as part of a Clearing Member Client Contract under FSMR; and~~
- ~~(iii) — the Authorised Person's receivables in respect of any Client Money identifiable in any other account held by the Authorised Person into which Client Money has been received;~~

~~except, in each case, for Client Money relating to a separate Statutory Trust which falls under (b).~~

~~(d) — The Authorised Person must:~~

- ~~(i) — distribute Client Money in accordance with Rule 14.2.15, so that each Client who is a beneficiary of each separate Statutory Trust receives a sum which is rateable to the Client Money entitlement and calculated in accordance with Rule 14.4.3(l) relating to each Client's Client Equity Balance; or~~
- ~~(ii) — (where applicable) transfer Client Money held at a Recognised Clearing House, Remote Clearing House or Non-ADGM Clearing House to effect or facilitate porting of positions held for the Clients who are beneficiaries of that separate Statutory Trust.~~

~~(e) — If, in connection with a Clearing Member Client Contract, Client Money is remitted directly to the Authorised Person from a Recognised Clearing House, a Remote Clearing House or from a Clearing Member thereof, then:~~

- ~~(i) — any such remittance in respect of a Client Account constituting a separate Statutory Trust under Rule 14.2.15 must be distributed to the relevant Client interested in such Client Account subject to Rule 14.2.1(d); and~~
- ~~(ii) — subject to (i), any such remittance in respect of any other Client Account must form part of the relevant Statutory Trust under (b) and be subject to distribution accordingly.~~

~~(f) — Where any Asset is valued by a Recognised Clearing House, the close-out price or valuation of the Recognised Clearing House shall apply on a Pooling Event, regardless of the actual time of close-out, provided that the Recognised Clearing House or Remote Clearing House has acted in accordance with its Default Rules.~~

~~(g) — [Deleted]~~

~~(h) — Where an Authorised Person that is a Clearing Member of a Recognised Clearing House or Remote Clearing House defaults, the Recognised Clearing House or Remote Clearing House may:~~

- ~~(i) port Client positions and related collateral (including proceeds of Client Money or Safe Custody Assets) where possible; and~~
- ~~(ii) after the completion of the default management process:

 - ~~(A) return any balance due directly to those Clients for whom the positions are held, if they are known to the Recognised Clearing House or Remote Clearing House; or~~
 - ~~(B) remit any balance to the Authorised Person for the account of its Clients if the Clients are not known to the Recognised Clearing House or Remote Clearing House.~~~~
- ~~(i) Where an Authorised Person acting in connection with a Clearing Member Client Contract for a Client (who is also an indirect Client) defaults, the Clearing Member with whom the Authorised Person has placed Client Money of the indirect Client, may:

 - ~~(i) transfer the positions and assets either to another Clearing Member of the relevant Recognised Clearing House or Remote Clearing House, or to another Authorised Person willing to act for the indirect Client; or~~
 - ~~(ii) liquidate the Assets and positions of the indirect Clients and remit all monies due to the indirect Clients.~~~~
- ~~(j) Where any balance remitted from a Recognised Clearing House or Remote Clearing House (or in the case of the Authorised Person being an indirect Client, a Clearing Member) to an Authorised Person is Client Money, (k) provides for the distribution of remittances from either an Individual Client Account or an Omnibus Client Account.~~
- ~~(k) Remittances received by the Authorised Person falling within (e) should not be pooled with Client Money held in any Client Account operated by the Authorised Person at the time of the Primary Pooling Event. Those remittances should be segregated and promptly distributed to each Client on whose behalf the remittance was received.~~
- ~~(l) [Deleted]~~
- ~~(m) [Deleted]~~
- ~~(n) Each Client's Client Equity Balance must be reduced by:

 - ~~(i) any amount paid by:

 - ~~(A) a Clearing House to a Clearing Member other than the Authorised Person in connection with a porting arrangement where Client Money is ported by the Recognised Clearing House or Remote Clearing House as part of the default management process of that Recognised Clearing House or Remote Clearing House;~~
 - ~~(B) a Clearing Member to another Clearing Member or Authorised Person (other than the Authorised Person) in connection with a Clearing Member Client Contract where Client Money is paid to the Client or a duly authorised representative of the Client;~~~~
 - ~~(ii) any amount paid by:~~~~

- ~~(A) a Recognised Clearing House or Remote Clearing House directly to that Client, where the amount comprises the balance owed by the Recognised Clearing House or Remote Clearing House after the completion of the Clearing Member's default management process by the Recognised Clearing House or Remote Clearing House; and~~
- ~~(B) a Clearing Member directly to an indirect Client in accordance with default management procedures adopted by the Clearing Member.~~
- ~~(iii) any amount that must be distributed to that Client by the Authorised Person in accordance with (e)(i) and (ii).~~
- ~~(o) When, in respect of a Client who is a beneficiary of a Statutory Trust, there is a positive individual Client balance and a negative Client Equity Balance in relation to that Statutory Trust, the credit for that Statutory Trust must be offset against the debit reducing the individual Client balance for that Client.~~
- ~~(p) When, in respect of a Client who is a beneficiary of a Statutory Trust, there is a negative individual Client Equity Balance and a positive Client Equity Balance in relation to that Statutory Trust, the credit for that Statutory Trust must be offset against the debit for that Statutory Trust reducing the Client Equity Balance for that Client.~~

Guidance

- ~~1. For the avoidance of doubt, 'relevant Clients' in the case of (e) includes any entitlement of a Client held by it for a Person who is an indirect client.~~
- ~~2. For the avoidance of doubt, in respect of a Clearing Member Client Contract, any Client Money remitted by the Recognised Clearing House or Remote Clearing House (or in the case of the Authorised Person being an indirect Client, a Clearing Member) to the Authorised Person pursuant to (e) should not be treated as Client Money received after the Failure of the Authorised Person under Rule 14.4.4.~~
- ~~3. The Authorised Person's obligation to its Client in respect of Client Money relating to a particular Statutory Trust is discharged where the Authorised Person, to facilitate porting transfers, or the transfer of that Client Money to a Clearing Member in connection with a Clearing Member Client Contract and the Clearing Member, remits payment to another Authorised Person or to another Clearing Member where the Client Money is paid to the Client or a duly authorised representative of the Client.~~

14.4.4 Client Money received after the Failure of the Authorised Person

- ~~(a) Subject to Rule 14.4.3, Client Money received by the Authorised Person after a Primary Pooling Event in respect of a Statutory Trust must not be pooled with Client Money held in any Client Account operated by the Authorised Person either in respect of that Statutory Trust or any other Statutory Trust at the time of the Primary Pooling Event. Such Client Money must instead be placed in a Client Account that has been opened after that event and must be handled in accordance with the requirements in Rule 14.2, and returned to the relevant Client(s) without delay, except to the extent that:
 - ~~(i) it is Client Money relating to a transaction that has not settled at the time of the Primary Pooling Event; or~~~~

- ~~(ii) — it is Client Money relating to a Client, for whom the Client Equity Balance, calculated in accordance with Rules 14.4.3(l), 14.4.3(o) and 14.4.3(p), shows that Money is due from the Client to the Authorised Person at the time of the Primary Pooling Event.~~
- ~~(b) — [Deleted]~~
- ~~(c) — If an Authorised Person receives a mixed remittance after a Primary Pooling Event, it must:
 - ~~(i) — pay the full sum into the separate Client Account opened in accordance with (a); and~~
 - ~~(ii) — pay the money that is not Client Money out of that Client Account into an Authorised Person's own account within one Business Day of the day on which the Authorised Person would normally expect the remittance to be cleared.~~~~
- ~~(d) — Whenever possible the Authorised Person should seek to split a mixed remittance before the relevant accounts are credited.~~
- ~~(e) — If both a Primary Pooling Event and a Secondary Pooling Event occur, the provisions of this section relating to a Primary Pooling Event apply.~~

Guidance

~~Client Money received after the Primary Pooling Event relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:~~

- ~~(i) — an equity transaction with a trade date before the date of the Primary Pooling Event and a settlement date after the date of the Primary Pooling Event; or~~
- ~~(ii) — a contingent liability investment that is 'open' at the time of the Primary Pooling Event and is due to settle after the Primary Pooling Event.~~

14.4.5 Secondary Pooling Events

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

Guidance

- ~~1. — These Rules in relation to Secondary Pooling Events seek to ensure that Clients who have previously specified that their Client Money be placed in a Designated Client Account at a different bank, should not suffer the loss of a different bank that has Failed.~~

- ~~2. When Client Money is transferred to a third party, an Authorised Person continues to owe fiduciary duties to the Client. Whether an Authorised Person is liable for a shortfall in Client Money caused by the Failure of a third party will depend on whether it has complied with its duty of care as agent or trustee.~~

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

- ~~(a) This section applies to third parties, which includes:~~

- ~~(i) a bank (where one or more general Client Accounts are held under one or more Statutory Trusts or separate Statutory Trusts); and~~
- ~~(ii) an intermediate broker, settlement agent or OTC counterparty.~~

- ~~(b) If a Secondary Pooling Event occurs as a result of the Failure of such a third party where one or more Client Accounts are held under different Statutory Trusts, then:~~

- ~~(i) in relation to every Client Account of the Authorised Person maintained in respect of a particular Statutory Trust, Rule 14.4.7 will apply.~~

- ~~(c) Money held in each general Client Account of the Authorised Person under a Statutory Trust or separate Statutory Trusts must be treated as pooled into a single Statutory Trust ("the relevant pool") and:~~

- ~~(i) any shortfall in Client Money or Relevant Money held, or which should have been held in the general Client Accounts for the relevant pool, that has arisen as a result of the Failure of the third party, must be borne by all the Clients or Payment Service Users, as applicable, of that relevant pool, rateably in accordance with their entitlements;~~

- ~~(ii) a new Client Money or Relevant Money entitlement, as applicable, must be calculated for each Client or Payment Service User, as applicable, of the relevant pool to reflect the requirements in (i), and the Authorised Person's records must be amended to reflect the reduced Client Money or Relevant Money entitlement;~~

- ~~(iii) the Authorised Person must make and retain a record of each Client's or Payment Service User's share of the shortfall of Client Money or Relevant Money, as applicable, at the Failed third party until the Client or Payment Service User, as applicable, is repaid; and~~

- ~~(iv) the Authorised Person must use the new Client Money or Relevant Money entitlements, calculated in accordance with (ii), for the purposes of reconciliations pursuant to Rules 14.2.1(a) to 14.2.1(d) for the relevant Clients in (ii).~~

- ~~(d) The term "which should have been held" is a reference to the Failed third party's Failure to hold the Client Money or Relevant Money, as applicable, at the time of the Pooling Event.~~

- ~~(e) Any Client Money held under a particular Statutory Trust, in relation to a Designated Client Account at a third party (other than the Failed third party) is not pooled with any other Client Money held in that particular Statutory Trust or any other Statutory Trusts.~~

- ~~(f) Any Client Money held under a Statutory Trust, no part of which is at the Failed third party, is not pooled with any Client Money of other affected Statutory Trusts.~~

- ~~(g) — [Deleted]~~
- ~~(h) — Any shortfall in Client Money or Relevant Money held under a particular Statutory Trust affected by a Secondary Pooling Event must be borne by all the Clients or Payment Service Users whose Client Money or Relevant Money, as applicable, is held in such a Statutory Trust, rateably in accordance with their Client Money or Relevant Money entitlements.~~
- ~~(i) — A new Client Money or Relevant Money entitlement, as applicable, must be accordingly and the Authorised Person's records must be amended to reflect each Client's or Payment Service User's new Client Money or Relevant Money entitlement, as applicable.~~
- ~~(j) — the Authorised Person must make and retain a record of each Client's or Payment Service User's share of the Client Money or Relevant Money shortfall at the Failed third party until the Client or Payment Service User is repaid; and~~
- ~~(k) — the Authorised Person must use the new Client Money or Relevant Money entitlements, calculated in accordance with (h), for the purposes of reconciliations pursuant to Rules 14.2.1(a) to 14.2.1(d) for the relevant Statutory Trust(s).~~
- ~~(l) — A Client whose Money was held, or which should have been held, in a Designated Client Account or Designated Client Fund with a Failed third party is not entitled to claim in respect of that Money against any other Client Account of the Authorised Person.~~

~~14.4.7 Client Money or Relevant Money received after the Failure of a third party~~

- ~~(a) — Client Money or Relevant Money received by the Authorised Person after the Failure of a third party, that would otherwise have been paid into a Client Account at that Failed third party:
 - ~~(i) — must, if Client Money, not be transferred to the Failed third party unless specifically instructed by the Client in order to settle an obligation of that Client to the Failed third party; and~~
 - ~~(ii) — must, if Client Money, be, subject to (i), placed in a separate Client Account:
 - ~~(A) — on the written instruction of the Client, transferred to a third party other than the one that has Failed; or~~
 - ~~(B) — returned to the Client as soon as possible.~~~~
 - ~~(iii) — must, if Relevant Money, be placed in a separate Client Account maintained with a third party other than the one which has Failed.~~~~
- ~~(b) — If an Authorised Person receives a mixed remittance after the Secondary Pooling Event which consists of Client Money that would have been paid into a Client Account, a Designated Client Account or a Designated Client Fund Account maintained at the third party that has Failed, it must:
 - ~~(i) — pay the full sum into a Client Account other than one operated at the Failed third party; and~~~~

- ~~(ii) — pay the money that is not Client Money out of that Client Account within one Business Day of the day on which the Authorised Person would normally expect the remittance to be cleared.~~
- ~~(c) — Whenever possible the Authorised Person should seek to split a mixed remittance before the relevant accounts are credited.~~

~~14.4.8 Notification to the Regulator~~

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

15. SAFE CUSTODY RULESPROVISIONS

15.1 Application

~~15.1.1 Subject to Rule 15.1.2, this chapter applies to an Authorised Persons holding or controlling Client Investments, including Authorised Persons which are engaged in the Regulated Activity of Providing Custody in accordance with Rule 14.3.1(d).~~

~~15.1.2 This chapter does not apply to Fund Managers, who are subject to the provisions of Chapter ~~15.3~~section 15.3 and Appendix A1.3 of the Fund Rules.~~

Guidance

- ~~1. The provisions of this chapter are referred to as the Safe Custody Rules and Client Investments held or controlled in accordance with the Safe Custody Rules are referred to as Safe Custody Assets.~~
- ~~2. As the scope of the Regulated Activity of Providing Custody excludes safekeeping of Money, Authorised Persons which hold or control Client Money are subject to chapter 14.~~
- ~~4.3. In accordance with Rule 17.2.1, Authorised Persons which Provide Custody in respect of Virtual Assets are restricted to safekeeping Accepted Virtual Assets only, and are also subject to the requirements set out in chapter 17.~~

~~15.1.2 This chapter does not apply to Authorised Persons who provide Payment Services, who are subject to Chapter 19.~~

15.2 General Requirements

~~15.2.1 The provisions of this chapter are referred to as the Safe Custody ProvisionsRules.~~

~~15.2.2 An Authorised Person must:~~

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

15.3 Recording, Registration and Holding Requirements

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

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

15.3.3 Where the Authorised Person controls Safe Custody Assets by holding a mandate, or similar authority over an account established in the Client's own name with a third party, its systems and controls must.

(a) include a current list of all such mandates and any conditions placed by the Client or by the Authorised Person on the use of the Mandate;

(b) include the details of the procedures and authorities for the giving and receiving of instructions under the Mandate;

~~(a)~~(c) ensure that all instructions relating to Transactions entered into using such a mandate are recorded and are within the scope of the authority of the Employee and the Authorised Person under the mandate.

15.4 Client Accounts in relation to Client Investments

15.4.1 An Authorised Person which ~~Provides Custody or holds or controls Client Investments must register or record all Safe Custody Investments in an account that is~~ holds Client Investments must register or record all Safe Custody Assets in an account that is a Client Account.;

~~(a) a Client Account in relation to Client Investments; or~~

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

15.4.2 ~~A Client Account in relation to Client Investments is an account which~~ For the purposes of the Safe Custody Rules, a Client Account is an account established with an Authorised Person which is authorised under its Financial Services Permission to Provide Custody or a Third-Party Agent outside ADGM to hold Client Investments.;

~~(a) is held with a Third Party Agent or by an Authorised Person which is authorised under its Financial Services Permission to Provide Custody~~ an account established with an Authorised Person which is authorised under its Financial Services Permission to Provide Custody or a Third-Party Agent outside ADGM to hold Client Investments;

~~(b) is established to hold Client Assets~~ maintained in the name of.;

~~(c) when held by a Third Party Agent, is maintained in the name of:~~

(i) ~~if an Authorised Person is in the form of a Domestic Firm, the Authorised Person or a Nominee Company; or~~

- (ii) if an Authorised Person ~~in the form of~~ is a Branch, a Nominee Company controlled by the Authorised Person; a Nominee Company controlled by the Authorised Person; and or
- (iii) in the name of the Client, unless the Client is an Authorised Person, in which case Safe Custody Assets held in the Client Account must be registered in the name of the Client of that Authorised Person.

~~(d)~~(c) includes the words "Client Account" in its title.

15.4.3 ~~An (a) An~~ Authorised Person must maintain a current master list of all Client Accounts and accounts referred to in Rules 15.4.1—15.4.2.

~~(b)~~(a) The master list must detail:

- (i) the name of each ~~the~~ account;
- (ii) ~~the~~ each account number;
- (iii) the custodian, sub-custodian or depository (if ~~not~~ the Authorised Person itself is not Providing Custody);
- ~~(iv) the banker of the account;~~
- ~~(v)~~(iv) whether the account is currently open or closed; and
- ~~(vi)~~(v) the date of opening or closure.

~~(c)~~(b) The details of the master list must be documented and maintained for a minimum period of six years following the closure of an account.

15.4.4 An Authorised Person must not use a Client's Safe Custody ~~Investment~~ Assets for its own purpose or that of another Person without that Client's prior written permission.

15.4.5 An Authorised Person which intends to use a Client's Safe Custody ~~Investments~~ Assets for its own purpose or that of another Person, must have systems and controls in place to ensure that:

- (a) it obtains that Client's prior written permission;
- (b) adequate records are maintained to protect Safe Custody ~~Investments~~ Assets which are applied as Collateral or used for stock lending activities;
- (c) the equivalent assets are returned to the Client Account of the Client; and
- (d) the Client is not disadvantaged by the use of his Safe Custody ~~Investments~~Assets.

Guidance

1. An Authorised Person may record, register or hold a Client's Investment in a Client Account solely for that Client. Alternatively, an Authorised Person may choose to pool that Client's Investment in a Client Account containing Investments of more than one Client.
2. The purpose of recording, registering or holding Investments in a Client Account is to ensure that Investments belonging to Clients are readily identifiable from

Investments belonging to the Authorised Person such that, following a Pooling Event, any subsequent distribution of Investments may be made in proportion to each Client's valid claim over those Investments.

3. ~~Following a Pooling Event, a Client may not have a valid claim over Investments registered, recorded or held in a Client Account if that Client Account was not established to register, record or hold Investments for that Client or a pool of Clients of which that Client was a part.~~ For the purposes of Rule 15.4.4, the Regulator would consider the use of Virtual Assets for the purpose of "staking" to be use for the purposes of the Authorised Person.

15.5 Holding or Arranging Custody with Third-Party Agents

15.5.1 Before an Authorised Person ~~holds~~ places a Safe Custody Investment with a Third-Party Agent or Arranges Custody through a Third-Party Agent, it must:

- ~~(b)~~(a) undertake an assessment of that Third-Party Agent and have concluded on reasonable grounds that the Third-Party Agent is suitable to hold those Safe Custody ~~Investments~~Assets;
- ~~(c)~~(b) An Authorised Person ~~must~~ have systems and controls in place to ensure that the Third-Party Agent remains suitable;
- ~~(d)~~(c) ~~When assessing the suitability of the Third Party Agent, the Authorised Person must ensure that the Third-Party Agent will provide protections equivalent to the protections conferred in this section.~~

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

Guidance

For the purposes of a Client Account established in accordance with the Safe Custody Rules, a Third-Party Agent is a Financial Institution which may be a bank, custodian, an intermediate broker, a settlement agent, a clearing house, an exchange or an "over-the-counter" counterparty acting in the capacity of third-party agent. When assessing the suitability of a Third-Party Agent to hold a Client Account, an Authorised Person must have regard to:

- (a) its credit rating;
- (b) its capital and financial resources in relation to the amount of Safe Custody ~~Investments~~Assets held;
- (c) the insolvency regime of the jurisdiction in which it is located;
- (d) its arrangements for holding the Investments;
- (e) its regulatory status, expertise, reputation and history;
- (f) its Group structure;
- (g) if the Third-Party Agent is a Related Party, whether applicable insolvency laws would result in the subordination of the Authorised Person's claims in the event of the failure of the Third-Party Agent;

~~(f)~~(h) the quantity of Client Investments to be placed with the Third-Party Agent, the availability of alternative Third-Party Agents and concentration risk;

~~(g)~~(i) its use of agents and service providers; and

~~(h)~~(j) any other activities of the agent.

15.6 Safe Custody Agreements with Third-Party Agents

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

...

15.7 Client Disclosure

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

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

- (a) a statement that the Client is subject to the protections conferred by the Safe Custody ~~Provisions~~Rules;
- (b) the arrangements for recording and registering Safe Custody ~~Investments~~Assets, claiming and receiving dividends and other entitlements and interest and the giving and receiving instructions relating to those Safe Custody ~~Investments~~Assets;
- (c) the obligations the Authorised Person will have to the Client in relation to exercising rights on behalf of the Client;
- (d) the basis and any terms governing the way in which Safe Custody ~~Investments~~Assets will be held, including any rights which the Authorised Person may have to realise Safe Custody ~~Investments~~Assets held on behalf of the Client in satisfaction of a default by the Client;
- (e) the method and frequency upon which the Authorised Person will report to the Client in relation to his Safe Custody ~~Investments~~Assets;
- (f) if applicable, a statement that the Authorised Person intends to mix Safe Custody ~~Investments~~Assets with those of other Clients;
- (g) if applicable, a statement that the Client's Safe Custody ~~Investments~~Assets may be held in a jurisdiction outside the Abu Dhabi Global Market and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the Abu Dhabi Global Market;
- (h) if applicable, a statement that the Authorised Person holds or intends to hold Safe Custody ~~Investments~~Assets in a Client Account with a Third-Party Agent which is in the same Group as the Authorised Person; and

- (i) the extent of the Authorised Person's liability in the event of default by a Third-Party Agent.

15.8 Client Reporting

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

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

15.8.2 The statement must include:

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

15.8.3 The statement sent to the Client must be prepared within one calendar month of the statement date.

Guidance

If an Authorised Person also holds or controls Client Money for a Client, it must comply with the reporting requirements set out in section 14.10.

15.9 Reconciliation

15.9.1 An Authorised Person must:

- (a) at least every calendar month, reconcile its records of Client Accounts held with Third-Party Agents with monthly statements received from those Third-Party Agents;
- (b) at least every six months, count all Safe Custody ~~Investments~~ Assets physically held by the Authorised Person, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Person; and
- (c) at least every six months, reconcile individual Client ledger balances with the Authorised Person's records of Safe Custody ~~Investment~~ Assets balances held in Client Accounts.

15.9.2 An Authorised Person must ensure that the process of reconciliation does not give rise to a conflict of interest.

15.9.3 An Authorised Person must maintain a clear separation of duties to ensure that an Employee with responsibility for operating Client Accounts, or an Eemployee that has authority over Safe Custody ~~Investment~~ Assets must not perform the reconciliations under Rule 15.9.1.

15.9.4 A — ~~Reconciliation performed in accordance with Rule 15.9.1 must be reviewed by a member of the Authorised Person who has adequate seniority.~~

15.9.5 The individual referred to in Rule ~~15.9.4~~^{15.9.4(a)} must provide a written statement confirming that the reconciliation has been undertaken in accordance with the requirements of this section.

15.9.6 An Authorised Person must notify the Regulator without undue delay where there have been material discrepancies with the reconciliation ~~which~~that have not been rectified.

Guidance

1. If an Authorised Person holds or Controls Client Investments which are Virtual Assets, the Authorised Person must conduct reconciliations at intervals in compliance with Rule 17.8.3.

2. A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.

3. In accordance with GEN 6.6.7, an Authorised Person whose Financial Service Permission entitles them to hold Client Investments must arrange for a Safe Custody Auditor's Report to be submitted to the Regulator on an annual basis.

~~1. —~~

~~A material discrepancy includes discrepancies which have the cumulative effect of being material, such as longstanding discrepancies.~~

15.10 Auditor's Reporting Requirements~~[Deleted]~~

~~15.11 In accordance with GEN 6.6.7, an Authorised Person to which this chapter applies must arrange for a Safe Custody Auditor's Report to be submitted to the Regulator on an annual basis.~~**Holding Collateral.**

15.11.1 Before an Authorised Person holds Collateral on behalf of a Client it must disclose to that Client:

(a) the basis and any terms governing the way in which the Collateral will be held, including any rights which the Authorised Person may have to realise the Collateral;

(b) if applicable, that the Collateral will not be registered in that Client's own name;

(c) if applicable, that the Authorised Person proposes to return to the Client Collateral other than the original Collateral or original type of Collateral; and

(d) that in the event of the Authorised Person's Failure:

(i) of an Abu Dhabi Global Market Firm, any excess Collateral will be sold and the resulting Client Money shall be distributed in accordance with the Client Money Distribution Rules; or

(ii) of a Non-Abu Dhabi Global Market Firm, that Collateral will be subject to a regime which may differ from the regime applicable in the Abu Dhabi Global Market.

- (e) Before an Authorised Person deposits Client's Collateral with a third party it must notify and obtain the agreement of the third party that:
 - (i) the Collateral does not belong to the Authorised Person and must therefore be held by the third party in a segregated Client Account in a name that clearly identifies it as belonging to the Authorised Person's Clients; and
 - (ii) the third party is not entitled to claim any lien or right of retention or sale over the Collateral except to cover the obligations owed to the third party arising on the segregated Client Account and no other account.
- (f) An Authorised Person may permit Client's Collateral to be held by a third party only where it has reasonable grounds to believe that the third party is, and remains, suitable to hold that Collateral.
- (g) An Authorised Person must be able to demonstrate to the Regulator's satisfaction the grounds upon which it considers the third party to be suitable to hold Client's Collateral.
- (h) An Authorised Person must take reasonable steps to ensure that the Collateral is properly safeguarded.
- (i) An Authorised Person must withdraw the Collateral from the third party where the Collateral is not being properly safeguarded unless the Client has indicated otherwise in writing.
- (j) An Authorised Person holding Client's Collateral must send a statement every six months to the Client.
- (k) An Authorised Person must reconcile the Client's Collateral in accordance with Rule 15.9.1 in the case of Collateral which is not a Virtual Asset, and Rule 17.8.3 in the case of Collateral which is a Virtual Asset.

15.11A Title Transfer Collateral Agreements

- 15.11A.1 An Authorised Person must not enter into a Title Transfer Collateral Agreement in respect of an asset belonging to a Retail Client.
- 15.11A.2 The Client Money Rules and Safe Custody Rules do not apply in respect of a Safe Custody Asset or Client Money which is held by an Authorised Person pursuant to a Title Transfer Collateral Agreement.
- 15.11A.3 An Authorised Person must ensure that any Title Transfer Collateral Agreement entered into with a client is written and a copy is provided to the Client. A Title Transfer Collateral Agreement must include within its terms:
 - (a) the terms of the agreement relating to the transfer of full ownership of the asset to the Authorised Person or its Nominee Company;
 - (b) the terms of the agreement by which full ownership of the asset will be returned to the Client;
 - (c) to the extent not covered in (a) or (b), any provisions governing the termination of the Title Transfer Collateral Agreement.

15.11A.4 All notices given by an Authorised Person to a Client in relation to the termination of, or exercise of rights of the Authorised Person in relation to, a Title Transfer Collateral Agreement must be in writing.

15.11A.5 An Authorised Person must keep records of all Title Transfer Collateral Agreement, including all instructions given by, or notifications given to, Clients in respect of Title Transfer Collateral Agreements for not less than six years after the agreement is terminated.

15.12 Record Keeping

15.12.1 An Authorised Person must maintain records which enable the Authorised Person to demonstrate compliance with the Safe Custody Rules; and which enable the Authorised Person to demonstrate and explain all entries of Client Investments and Collateral held or controlled in accordance with this chapter.

15.12.2 Records must be kept for a minimum of six years following the date of closure of a Client Account.

15.13 Notification of Failure to Comply

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

16. RECOVERY AND RESOLUTION PLANNING FOR CLIENT MONEY, RELEVANT MONEY AND SAFE CUSTODY ASSETS

Guidance

This chapter contains Rules which ensure that an Authorised Person maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of Client Money, Relevant Money and Safe Custody Assets (Chapters 14 and 15) held by the Authorised Person to Clients or Payment Service Users, as applicable.

~~16.1 Application and purpose~~

~~16.1.1 This chapter contains rules which ensure that an Authorised Person maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner in achieving a timely return of Client Money, Relevant Money and Safe Custody Assets (Chapters 14 and 15) held by the Authorised Person to Clients or Payment Service Users, as applicable.~~

~~16.1.2~~ 16.1 This chapter applies to an Authorised Person ~~when~~ where it:

(a) holds, safeguards or administers Financial Instruments or Virtual Assets for a Client;

~~(a)~~ (b) acts as Trustee, Eligible Custodian or depository or Fund Manager of an Alternative Investment Fund or is acting as trustee or depository of a Collective Investment Fund; and

~~(b)~~ (c) Otherwise holds Client Money, or Relevant Money or Safe Custody Assets in accordance with Chapters 14, 15, 17, or 19, respectively.

16.2 General provisions

16.2.1 An Authorised Person falling within Rule ~~16.146.4.2~~ must maintain at all times and be able to retrieve, in the manner described in this chapter, the documents and records specified in Rule 16.3.1 and Rule 16.4.1 (the "Resolution Pack").

Guidance

1. An Authorised Person falling within the scope of Rule 16.1 should keep the component documents of the Resolution Pack up-to-date so they can be retrieved in accordance with Rule 16.2.6, and the Authorised Person should not use the retrieval period to start producing or revising these documents.

~~15.14.12.~~ The contents of the documents that constitute the Resolution Pack should be reviewed periodically or where there is a material change in the matters they cover and updated appropriately, such as when reconciliations are undertaken in accordance with chapters 14, 15 or 17.

...

Guidance

~~1. An Authorised Person falling within Rule 16.1.2 should maintain the component documents of the Resolution Pack in order for them to be retrieved in accordance with Rule 16.2.6, and should not use the retrieval period to start producing or revising these documents.~~

~~2. The contents of the documents that constitute the Resolution Pack are likely to change from time to time (for example, because regular reconciliations must be included in the pack).~~

...

16.2.5 For the purpose of this chapter, an Authorised Person will be treated as satisfying Rule 16.2.1 ~~in this chapter~~ requiring it to include a document in its Resolution Pack if a member of that Authorised Person's Group includes that document in its own Resolution Pack, provided that:

- (a) that Group member is ~~also~~ subject to Rule 16.2.6; and
- (b) the Authorised Person is still able to comply with Rule 16.2.6.

...

16.2.8 For the purpose of Rule 16.2.6, the following documents and records must be retrievable immediately:

- (a) the document identifying the institutions referred to in Rule 16.3.1(b);
- (b) the document identifying individuals pursuant to Rule 16.3.1(d); and
- (c) the most recent reconciliations relating to Client Money, Relevant Money and Safe Custody Assets ~~and Client Money referred to in Rule 15.9.1.~~

16.2.9 Where an Authorised Person is reliant on the continued operation of certain systems for the provision of component documents in its Resolution Pack, it must have arrangements in place to ensure that these systems will remain operational and accessible to it after its insolvency.

Guidance

1. Contravention of either Rule 16.2.8 or 16.2.9 may be relied upon as tending to establish contravention of Rule 16.2.6.
- 4.2. Where an Authorised Person anticipates that it might be the subject of an insolvency order, it is likely to have sought advice from an external adviser. The Authorised Person should make the Resolution Pack available promptly, on request, to such an adviser.

16.2.10 [Deleted]

16.2.11 [Deleted]

Guidance

- ~~1. Contravention of either Rule 16.2.8 or 16.2.9 may be relied upon as tending to establish contravention of Rule 16.2.6.~~
- ~~2. Where an Authorised Person anticipates that it might be the subject of an insolvency order, it is likely to have sought advice from an external adviser. The Authorised Person should make the Resolution Pack available promptly, on request, to such an adviser.~~

16.2.12 An Authorised Person must ensure that it reviews the content of its Resolution Pack on an ongoing basis to ensure that it remains accurate. In relation to any change of circumstances that has the effect of rendering inaccurate, in any material respect, the content of a document specified in Rule 16.2.1, an Authorised Person must ensure that any inaccuracy is corrected promptly and in any event no more than five Business Days after the change of circumstances arose.

Guidance

For the purpose of Rule 16.2.12, an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to Rule 16.3.1(b).

16.2.13 [Deleted]

Guidance

~~For the purpose of Rule 16.2.12, an example of a change that would render a document inaccurate in a material respect is a change of institution identified pursuant to Rule 16.3.1(b).~~

16.2.14 An Authorised Person may hold in electronic form any document in its Resolution Pack provided that it continues to be able to comply with Rule 16.2.6 in respect of that document.

...

16.3 Core Content Requirements

16.3.1 An Authorised Person must include within its Resolution Pack:

- (a) a master document containing information sufficient to retrieve each document in the Authorised Person's Resolution Pack;

- (b) a document which identifies the institutions the Authorised Person has appointed ~~(including through a tied agent, field representative or other agent):~~
 - (i) ~~in the case of Client Money or Relevant Money, to hold and maintain Client Accounts or Payment Accounts, respectively; and, for the placement of money in accordance with Rule 14.2.3 or to hold or control Client Money in accordance with Rule 14.2.5(c); and~~
 - (ii) in the case of Safe Custody Assets, for the deposit of those assets in accordance with Rule 15.5.1;
- (c) a document which identifies each tied agent, field representative or other agent of the Authorised Person which receives Client Money or Safe Custody Assets in its capacity as the Authorised Person's agent in accordance with Rule 15.5.1 and Rule 15.6;
- (d) a document which identifies ~~each~~ all senior managers, directors and ~~any~~ other individuals, and the nature of their responsibility within the Authorised Person or elsewhere, who is that are critical or important to the performance of operational functions related to any of the obligations imposed on the Authorised Person by this chapter;
- (e) for each institution identified in Rule ~~16.3.1 (b)~~ 14.3.1(b) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between that institution and the Authorised Person that relates to the holding of Client Money, Relevant Money or Safe Custody Assets;
- (f) a document which:
 - (i) identifies each member of the Authorised Person's Group involved in operational functions related to any obligations imposed on the Authorised Person under this chapter, including, in the case of a member that is a nominee company, identification as such; and
 - (ii) identifies each third party which the Authorised Person uses for the performance of operational functions related to any of the obligations imposed on the Authorised Person by this chapter;
- (g) for each Group member identified in Rule ~~14.3.1(f)(i)~~ 16.3.1(b), the type of entity (such as branch, subsidiary and/or nominee company) the Group member is, its jurisdiction of incorporation if applicable, and a description of its related operational functions;
- (h) a copy of each executed agreement, including any side letters or other agreements used to clarify or modify the terms of the executed agreement, between the Authorised Person and each third party identified in Rule ~~14.3.1~~ 16.3.1(f)(ii)(b);
- (i) where the Authorised Person relies on a third party identified in Rule ~~14.3.1(f)(i)~~ 16.3.1(c), a document which describes how to:
 - (i) gain access to relevant information held by that third party; and
 - (ii) effect a transfer of any of the Client Money, Relevant Money or Safe Custody Assets held by the Authorised Person, but controlled by that third party; and

- (i) _____ a copy of the Authorised Person's manual which records its procedures for the management, recording and transfer of the Client Money, Relevant Money or Safe Custody Assets that it holds.

Guidance

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

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

16.3.2 For the purpose of Rule 16.3.1(b) the document must record:[Deleted]

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

Guidance

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

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

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

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

16.4 Existing records to be included in the Resolution Pack

16.4.1 The following records must be included in the Resolution Pack of an Authorised Person conducting Investment Business:

- (a) Rules 2.7.1 and 3.7.1(d) (records of Client classification and Client agreements);
- (b) Rules 14.6.2 and 15.4.3 (master lists of all Client Accounts in relation to Client Money and Client Investments);

- (c) Rule 15.4.4 and Rule 15.4.5 (adequate records and Client's written permission re use of Client Investments);
- ~~(d) Rules 15.4.5(b) (records of a Client's Investments);~~
- ~~(e)(d) Rules 14.7.1 and 14.7.4~~Rule 15.5.1(a) (assessment of appropriateness of Third-Party Agent and acknowledgement by Third-Party agent in respect of Client Money); and
- (e) Rules 15.5.1 and 15.6.1 (assessment of appropriateness of Third-Party Agent and acknowledgement by Third-Party Agent in respect of Client Investments); and
- (f) Rules 14.11.1 ~~Rule~~ and 15.9.1 (most recent reconciliations of Client Money and Client Investments).

16.4.2. Guidance

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

...

- 17.2.3 For the purposes of Rule 17.2.1, the maturity/market capitalisation requirements are set out in the accompanying Guidance published by the Regulator concerning Virtual Assets that accompanies ~~to~~ this chapter.

17.3 Capital Requirements

- 17.3.1 The capital requirements set out in MIR Rule 3.2 (Capital Requirements) ~~shall~~ must apply to an Authorised Person conducting a Regulated Activity in relation to Virtual Assets.

...

17.6 Additional disclosure requirements

- 17.6.1 Prior to entering into an initial Transaction for, on behalf of, or with a Client, an Authorised Person conducting a Regulated Activity in relation to Virtual Assets must disclose in a clear, fair and not misleading manner all material risks associated with (i) its products, services and activities (ii) Virtual Assets generally and (iii) the Accepted Virtual Asset that is the subject of the Transaction.

...

17.8 Additional Rules Applicable to an Authorised Person Providing Custody in relation to Virtual Assets

- 17.8.1 In addition to the general requirements applicable to an Authorised Person conducting a Regulated Activity in relation to Virtual Assets as set out in Rules 17.1 – 17.6, an Authorised Person that is Providing Custody in relation to Virtual Assets must comply with the requirements set out in COBS, Chapters 14, 15 and 16, as set out in Rules 17.8.2 – 17.8.3.

Guidance

An Authorised Person conducting a Regulated Activity in relation to Virtual Assets which hold or control Client Money must comply with the Client Money Rules set out in Chapter 14, as amended by the requirements set out in Rule 17.8.4.

17.8.2 For the purposes of Rule 17.8.1, ~~the following references in Chapters 14, 15 and 16 should be read as follows:-~~

~~(a) references to “Client Assets” shall be read as encompassing “Virtual Assets”; and~~

~~(b) references to “Investment” or “Investments”, (and, a result, the corresponding references to “Client Investments”) shall be read as encompassing “Virtual Asset” or “Virtual Assets”, as applicable.~~

17.8.3 For the purposes of an Authorised Person that is Providing Custody in relation to Virtual Assets, the following requirements in COBS, ~~Chapters 14 and 15~~ shall be read as follows:-

~~(a) the reconciliations of the Client Accounts required under COBS Rule-~~

~~(i) 14.2.12(a) shall be carried out at least every week; and~~

~~(ii) 14.2.12(d) shall be carried out within 5 days of the date to which the reconciliation relates;~~

~~(b)(a) the statements required under COBS Rule 15.8.1(a) shall~~must be sent to a Retail Client at least monthly; and

~~(b) all reconciliations required under COBS Rule 15.9.1 shall~~must be conducted at least every week.

17.8.4 For the purposes of an Authorised Person that conducts a Regulated Activity in relation to Virtual Assets which holds or controls Client Money, the reconciliations of Client Accounts required under Section 14.11 shall be read as follows:

(a) Rule 14.11.1 must be carried out at least every week; and

~~(e)~~(b) Rule 14.11.4 must be carried out within five days of the date to which the reconciliation relates.

18. OPERATING A PRIVATE FINANCING PLATFORM

...

18.3.2 A PFP Operator must not publish information concerning any financing proposal upon a Private Financing Platform unless:

(a) the PFP Operator has disclosed its business terms, including Fees, to the PFP Prospect which is associated with the financing proposal;

...

18.4 Due Diligence

18.4.1 Prior to publishing a financing proposal in relation to a PFP Prospect on a Private Financing Platform, the PFP Operator ~~shall~~must perform due diligence upon the PFP Prospect, in order to satisfy the disclosure requirements imposed on it by Rule 18.5.1. Such due diligence ~~shall~~must include, but not be limited to, a review of the following information to be provided by the PFP Prospect:

...

18.8.3 A PFP Operator, that offers an exit facility on a Private Financing Platform, must not:

- (a) permit any person other than a PFP Client to offer, purchase or sell any Specified Investment through the exit facility ;
- (b) charge any ~~F~~fee, levy or commission in exchange for access to the exit facility or any transaction performed through it;

...

19. PAYMENT SERVICES

...

General information to be included in Framework Contracts

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

- (a) about the Payment Service Provider:

...

- (h) if the Payment Service involves the issuance of Stored Value, about the redemption of Stored Value, including the conditions of redemption and any related ~~f~~fees.

...

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

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

- (2) Any refund or justification for refusing a refund must be provided within ten ~~Business d~~Days of receiving a request for a refund or, where applicable, within ten ~~Business d~~Days of receiving any further information requested under Rule 19.13.1(2).

...

19.14 Execution of Payment Transactions

Receipt of Payment Orders

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

...

Revocation of a Payment Order

- 19.14.3 (1) Subject to (2) to (4), a Payment Service User may not revoke a Payment Order after it has been received by the Payer's Payment Service Provider.
- ...
- (3) In the case of a Direct Debit, the Payer may not revoke the Payment Order after the end of the Business dDay preceding the day agreed for debiting the Money.

...

Payment Transactions to a Payment Account

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

...

Money placed on a Payment Account

- 19.15.3 Where a Payment Service User transfers Money to its Payment Account with a Payment Service Provider in the same currency as that Payment Account, the Payment Service Provider must:
- (a) if the user is a Natural Person, ensure that the amount is made available and value dated immediately after the receipt of the Money;
- (b) in any other case, ensure that the amount is made available and value dated no later than the end of the next Business dDay after the receipt of the Money.

...

Stored Value

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

...

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

...

- (3) Where before the termination of the Framework Contract a Payment Service User that is a Natural Person makes a request for redemption of Stored Value, the Payment Service User may request redemption of the monetary value of the Stored Value in whole or in part, and the Payment Service Provider must redeem the amount so requested, subject to any Fee imposed in accordance with Rule 19.15.5(2).

...

19.19 Payment Service Provider's liability for unauthorised Payment Transactions

19.19.1 (1) Subject to Rules 19.17.1, 19.17.2 and 19.18.1, where an executed Payment Transaction was not authorised in accordance with Rule 19.10.1, the Payment Service Provider must:

- (a) refund the amount of the unauthorised Payment Transaction to the Payer; and
- (b) where applicable, restore the debited Payment Account to the state it would have been in had the unauthorised Payment Transaction not taken place.

(2) The Payment Service Provider must provide a refund under (1) as soon as practicable, and in any event no later than the end of the ~~Business d~~Day following the day on which it becomes aware of the unauthorised Payment Transaction.

...

19.20 Payer or Payee's liability for unauthorised Payment Transactions

19.20.1 (1) Subject to (2) and (3), a Payment Service Provider which is liable under Rule 19.19.1 may require that the Payer be liable up to a maximum of US\$50 for any losses incurred in respect of unauthorised Payment Transactions arising from the use of a lost or stolen Payment Instrument, or from the misappropriation of a Payment Instrument.

(2) The liability in (1) does not apply if:

- (a) the loss, theft or misappropriation of the Payment Instrument was not detectable by the Payer prior to the unauthorised Payment Transaction; or
- (b) the loss was caused by acts or omissions of an Employee, agent or branch of a Payment Service Provider or of an entity which carried out activities on behalf of the Payment Service Provider.

...

19.22 Dispute resolution

- 19.22.1 (1) A Payment Service Provider must put in place and utilise adequate and effective complaint resolution procedures for the settlement of complaints from Payment Service Users about the rights and obligations arising under this Chapter.
- (2) All complaints must be recorded, investigated and resolved within an adequate timeframe and at the latest fifteen ~~Business d~~Days after the day on which the Payment Service Provider received the complaint.

...

20. THIRD PARTY PROVIDERS**20.1 Application**

20.1.1 Chapter 20 of these Rules applies to Third Party Providers.

Guidance

1. Third Party Providers intermediate the relationship between their Customers and their Customers' Financial Institutions. The relationship between Third Party Providers and their Customers is separate from and does not affect Customers' existing relationships with their Financial Institutions.
2. Third Party Providers differ from technical service providers because they have a relationship with Customers of Financial Institutions for the provision of Third Party Services. While technical service providers may provide software, infrastructure or other products and services that involve the accessing and processing of Specified Information, they do not have such a relationship with Customers of Financial Institutions.
3. For example, a telecommunications company provides infrastructure and software that allows its customers to transfer information to other parties. Some of the telecommunications company's customers are Customers of Financial Institutions and these Customers use the telecommunications company's services to transfer Specified Information to their Financial Institutions. The telecommunications company is not a Third Party Provider because it has not established a relationship between the Customers and the Customers' Financial Institutions for the provision of Third Party Services.
- ~~3.~~ 4. In some circumstances, a Third Party Provider may offer technical services (the Offering Third Party Provider) to another Third Party Provider (the Receiving Third Party Provider). Such technical services may include software or infrastructure that allows the Receiving Third Party Provider to connect to specific Financial Institutions on behalf of its Customers. Under these circumstances:

...

General information

20.2.2 Unless otherwise agreed in writing between a Third Party Provider and their Customer, the Governing Contract between the Third Party Provider and their Customers must contain the following information –

- (a) about the Third Party Provider:

FINANCIAL SERVICES REGULATORY AUTHORITY

...

(d) about communication:

- (i) the means of communication agreed between the parties for the transmission of information or notifications including, where relevant, any technical requirements for the Customer's equipment and software for receipt of the information or notifications;
- (ii) the manner in which and frequency with which information under this Chapter 20 is to be provided or made available;

...

20.8 Execution of Third Party Transactions

Refusal of Third Party Transactions

20.8.1 (1) Where a Third Party Provider refuses to execute a Third Party Transaction, it must notify the Customer of the refusal at the earliest opportunity.

(2) The Third Party Provider must provide the notification in the agreed manner of the refusal as set out in Rule 20.2.2.

(3) Where possible, the Third Party Provider ~~shall~~must include the reasons for such refusal in the notification as well as the procedure that the Customer must take for rectifying any issues or factual errors that led to the refusal.

...

20.11.3 Upon request by the Primary Financial Institution, the Third Party Provider ~~shall~~must provide supporting evidence to demonstrate that the Third Party Transaction was authenticated, accurately recorded and executed in accordance with the Third Party Provider's policies for providing Third Party Services.

...

20.12.2 The Third Party Provider must provide a refund under Rule 20.12.1 as soon as practicable, and in any event no later than the end of the ~~Business d~~Day following the day on which it has confirmed that the Third Party Transaction was unauthorised or incorrectly executed.

...

20.13.2 All complaints must be recorded, investigated and resolved within an adequate timeframe and at the latest ~~fifteen Business d~~Days after the day on which the Third Party Provider received the complaint.

...

Incident reporting

...

Guidance

1. Upon receipt of the notification referred to in 20.14.2(1), the Regulator may notify any other relevant authorities in the U.A.E.-

...

Technical Standards for Interfacing Systems

- 20.14.4 (1) A Third Party Provider ~~shall~~must ensure that their Interfacing Systems comply with technical standards that the Regulator may prescribe.

...

21.3.4 Monitoring, surveillance and reporting

A Benchmark Administrator must have effective arrangements:

- (a) that enable the regular monitoring and surveillance of the information, and source of information, used in the process of determining the Specified Benchmark it administers;
- (b) for the monitoring, and reporting, of any conduct that influences, or attempts to influence, the value, or process for the determination, of the Specified Benchmark it administers, including in circumstances where such conduct is false, misleading or manipulative;

Guidance

1. A Benchmark Administrator should consider the reporting and escalation mechanisms between itself and its benchmark administration manager, as well as its process for the internal reporting of such conduct to its senior management.
 - (a) for taking appropriate action against any Person providing information in relation to the Specified Benchmark it administers, where it suspects, or has formed a view that, a Person has engaged in any conduct that influences, or attempts to influence, the value, or process of the determination of the Specified Benchmark administered by the Benchmark Administrator, including in circumstances where such conduct is false, misleading or manipulative;
 - (b) to report to the Regulator, as soon as reasonably practicable, the details of:
 - (i) any conduct identified in Rule 21.3.4(b); and
 - (ii) any action it has taken under Rule 21.3.4(c);
 - (c) that enable it to restrict or suspend any Person providing information in relation to the Specified Benchmark it administers, pursuant to any action it takes under Rule 21.3.4(c).

2. Guidance

For the purposes of this Rule, any conduct that influences, or attempts to influence, the value, or process for the determination, of a Specified Benchmark

in a manner that is false, misleading or manipulative, includes conduct referred to in section 104 of FSMR.

...