

FINANCIAL SERVICES REGULATORY AUTHORITY
سلطة تنظيم الخدمات المالية

Conduct of Business Rulebook (COBS)

*In this Appendix, underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

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17. ADDITIONAL RULES – OPERATING A CRYPTO ASSET BUSINESS

17.1. Application and Interpretation

17.1.1. This chapter applies to Authorised Persons Operating a Crypto Asset Business.

17.1.2. Authorised Persons Operating a Crypto Asset Business must comply with all requirements applicable to Authorised Persons in the following Rulebooks, unless the requirements in this chapter expressly provide otherwise –

- (a) this Conduct of Business Rulebook (COBS);
- (b) the General Rulebook (GEN);
- (c) the Anti-Money Laundering and Sanctions Rules and Guidance (AML);
- (d) the Islamic Finance Rules (IFR); and
- (e) the Rules of Market Conduct (RMC), made by the Regulator in accordance with section 96 of the *Financial Services and Markets Regulations 2015*.

17.1.3. For the purposes of Operating a Crypto Asset Business all references to -

- (a) “Investment Business” shall be read to include “Operating a Crypto Asset Business”;
- (b) “Client Investments” in GEN shall be read as encompassing “Crypto Asset” or “Crypto Assets”, as applicable; and
- (c) “Financial Instruments” in RMC shall be read as references to “Crypto Asset” or “Crypto Assets”, as applicable.

17.1.4. The following COBS Rules should be read as applying to all Transactions undertaken by an Authorised Person Operating a Crypto Asset Business, irrespective of any restrictions on application or any exception to these Rules elsewhere in COBS -

- (a) Rule 3.4 (Suitability);
- (b) Rule 6.5 (Best Execution);
- (c) Rule 6.7 (Aggregation and Allocation);
- (d) Rule 6.10 (Confirmation Notes);
- (e) Rule 6.11 (Periodic Statements); and
- (f) Chapter 12 (Key Information and Client Agreement).

17.2. Accepted Crypto Assets

17.2.1. An Authorised Person engaged in the Regulated Activity of Operating a Crypto Asset Business in or from the Abu Dhabi Global Market when using Crypto Assets must only use Accepted Crypto Assets.

17.2.2. For the purposes of determining whether, in its opinion, a Crypto Asset meets the requirements of being an Accepted Crypto Asset, the Regulator will consider –

- (a) a maturity/market capitalisation threshold in respect of a Crypto Asset; and
- (b) other factors that, in the opinion of the Regulator, are to be taken into account in determining whether or not a Crypto Asset in question meets the requirements to be considered appropriate for the purpose of the Regulated Activity of Operating a Crypto Asset Business in or from the Abu Dhabi Global Market.

17.2.3. For the purposes of Rule 17.2.1, the maturity/market capitalisation requirements are set out in Guidance to this chapter.

17.3. Capital Requirements

17.3.1. The capital requirements set out in MIR Rule 3.2 (Capital Requirements) shall apply to Authorised Persons Operating a Crypto Asset Business.

17.3.2. For the purposes of Operating a Crypto Asset Business, all references in MIR Rule 3.2 to “Recognised Investment Exchange” shall be read as references to “Authorised Person”.

17.4. International Tax Reporting Obligations

17.4.1. Authorised Persons Operating a Crypto Asset Business where applicable should consider any reporting obligations in relation to, among other things –

- (a) FATCA, as set out in the Guidance Notes on the requirements of the Intergovernmental Agreement between the United Arab Emirates and the United States, issued by the UAE Ministry of Finance in 2015 and as amended from time to time; and
- (b) Common Reporting Standards, set out in the ADGM Common Reporting Standard Regulations 2017.

17.5. Technology Governance and Controls

An Authorised Person Operating a Crypto Asset Business must, as a minimum, have in place systems and controls with respect to the following:

Crypto Asset Wallets

- (a) Procedures describing the creation, management and controls of Crypto Asset wallets, including:
 - (i) wallet setup/configuration/deployment/deletion/backup and recovery;
 - (ii) wallet access privilege management;
 - (iii) wallet user management;
 - (iv) wallet rules and limit determination, review and update; and
 - (v) wallet audit and oversight.

Private keys

- (b) Procedures describing the creation, management and controls of private keys, including:
 - (i) private key generation;
 - (ii) private key exchange;
 - (iii) private key storage;
 - (iv) private key backup;
 - (v) private key destruction; and
 - (vi) private key access management.

Origin and destination of Crypto Asset funds

- (c) Systems and controls to mitigate the risk of misuse of Crypto Assets, setting out how –

- (i) the origin of Crypto Assets is determined, in case of an incoming transaction; and
- (ii) the destination of Crypto Assets is determined, in case of an outgoing transaction.

Security

- (d) A security plan describing the security arrangements relating to:
 - (i) the privacy of sensitive data;
 - (ii) networks and systems;
 - (iii) cloud based services;
 - (iv) physical facilities; and
 - (v) documents, and document storage.

Risk management

- (e) A risk management plan containing a detailed analysis of likely risks with both high and low impact, as well as mitigation strategies. The risk management plan must cover, but is not limited to:
 - (i) operational risks;
 - (ii) technology risks, including 'hacking' related risks;
 - (iii) market risk for each Accepted Crypto Asset; and
 - (iv) risk of Financial Crime.

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 Operating a Crypto Asset Business shall disclose in a clear, fair and not misleading manner all material risks associated with (i) its products, services and activities (ii) Crypto Assets generally and (iii) the Accepted Crypto Asset that is the subject of the Transaction.

17.6.2. The risks to be disclosed pursuant to Rule 17.6.1. include, but are not limited to, the following
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- (a) Crypto Assets not being legal tender or backed by a government;
- (b) the value, or process for valuation, of Crypto Assets, including the risk of a Crypto Assets having no value;
- (c) the volatility and unpredictability of the price of Crypto Assets relative to Fiat Currencies;
- (d) that trading in Crypto Assets is susceptible to irrational market forces;
- (e) that the nature of Crypto Assets may lead to an increased risk of Financial Crime;
- (f) that the nature of Crypto Assets may lead to an increased risk of cyber-attack;
- (g) there being limited or, in some cases, no mechanism for the recovery of lost or stolen Crypto Assets;
- (h) the risks of Crypto Assets being transacted via new technologies, (including distributed ledger technologies ('DLT')) with regard to, among other things, anonymity,

irreversibility of transactions, accidental transactions, transaction recording, and settlement;

- (i) that there is no assurance that a Person who accepts a Crypto Asset as payment today will continue to do so in the future;
- (j) that the nature of Crypto Assets means that technological difficulties experienced by the Authorised Person may prevent the access or use of a Client's Crypto Assets;
- (k) any links to Crypto Assets related activity outside ADGM, which may be unregulated or subject to limited regulation; and
- (l) any regulatory changes or actions by the Regulator or Non-ADGM Regulator that may adversely affect the use, transfer, exchange, and value of a Crypto Asset.

17.7. Additional Rules Applicable to Authorised Persons Operating a Crypto Asset Exchange

17.7.1. In addition to the general requirements applicable to Authorised Persons Operating a Crypto Asset Business, as set out in Rules 17.1 – 17.6 above, Authorised Persons that are Operating a Crypto Asset Exchange must comply with the requirements set out in –

- (a) COBS, MIR and GEN, as set out in Rules 17.7.2 – 17.7.6 below; and
- (b) Rule 17.8 below if also Operating as a Crypto Asset Custodian.

17.7.2. Authorised Persons that are Operating a Crypto Assets Exchange must comply with the requirements set out in COBS, Chapter 8, save for Rules 8.4.6 and 8.6.

17.7.3. For the purposes of Rule 17.7.2, the following references in COBS, Chapter 8 should be read as follows:

- (a) references to “Operating a Multilateral Trading Facility (“MTF”)” or “Operates a Multilateral Trading Facility (“MTF”)” shall be read as references to “Operating a Crypto Asset Exchange”;
- (b) references to an “MTF Operator” shall be read as references to a “Crypto Asset Exchange Operator”;
- (c) references to an “MTF” or “Facility” shall be read as references to a “Crypto Asset Exchange”;
- (d) references to “Investment” or “Investments” shall be read as references to “Crypto Asset” or “Crypto Assets”, as applicable; and
- (e) references to “Financial Instrument” or “Financial Instruments” (including those in MIR as incorporated by virtue of COBS Rule 8.2.1) shall be read as references to “Crypto Asset” or “Crypto Assets”, as applicable.

17.7.4. Authorised Persons that are Operating a Crypto Asset Exchange must comply with the following requirements set out in MIR, Chapter 5 -

- (a) Rules 5.1 - 5.3; and
- (b) Rule 5.4.1, in the circumstances identified in Items 18, 19, 23 (a) and (b), 26, 27, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 44, 45, 47, 48, 49, 51, 52, 53, 54, 56, 57, 58, 59, 60 and 61.

17.7.5. For the purposes of Rule 17.7.4 all references to -

- (a) “Recognised Body” or “Recognised Bodies” shall be read as references to “Authorised Person”; and
- (b) “Financial Instrument” or “Financial Instruments” shall be read as references to “Crypto Asset” or “Crypto Assets”, as applicable.

17.7.6. Rule 5.2.14 of GEN shall apply to Authorised Persons Operating a Crypto Asset Exchange, and all references to –

- (a) a “Multilateral Trading Facility” shall be read as references to a “Crypto Asset Exchange”; and
- (b) “Investment” shall be read as references to “Crypto Assets”.

17.8. Additional Rules Applicable to Authorised Persons Operating as a Crypto Asset Custodian

17.8.1. In addition to the general requirements applicable to Authorised Persons Operating a Crypto Asset Business, as set out in Rules 17.1 – 17.6 above, an Authorised Person that is Operating as a Crypto Asset Custodian 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 below.

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 “Crypto Assets”;
- (b) references to “Investment” or “Investments”, (and, as a result, the corresponding references to “Client Investments”) shall be read as encompassing “Crypto Asset” or “Crypto Assets”, as applicable;
- (c) references to “Investment Business” shall be read to include “Operating a Crypto Asset Business”; and
- (d) references to “Providing Custody” in COBS, Chapters 14, 15 and 16 shall be read as references to “Operating as a Crypto Asset Custodian”, within the Regulated Activity of Operating as a Crypto Asset Business, as defined in sub-paragraph 73B(5) of Schedule 1 of the *Financial Services and Markets Regulations 2015*.

17.8.3. For the purposes of Authorised Persons that are Operating as a Crypto Asset Custodian, 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) the statements required under COBS Rule 15.8.1(a) shall be sent to a Retail Client at least monthly; and
- (c) all reconciliations required under COBS Rule 15.9.1 shall be conducted at least every week.