

**FINANCIAL SERVICES REGULATORY AUTHORITY**  
**سلطة تنظيم الخدمات المالية**

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## **Conduct of Business Rulebook (COBS)**

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

## 2. CLIENT CLASSIFICATION

### 2.1 Application

2.1.1 This chapter applies to an Authorised Person carrying on or intending to carry on any Regulated Activity with or for a Person.

2.1.2 For the purposes of this chapter, a Person includes any organisation (including outside of the Abu Dhabi Global Market) whether or not it has a separate legal personality.

2.1.3 This chapter does not apply to 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.

2.1.4 This chapter does not apply to an Authorised ISPV.

#### Guidance

~~2.1.51.~~ The activity described in section 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 Licence, provided the Regulated Activities or Specified Investments marketed by it are those offered by its head office, or a member of its Group.

~~2.1.62.~~ 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.

~~2.1.73.~~ 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.

### 2.2 Client Categorisation

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

- (a) Retail Client;
- (b) Professional Client; and
- (c) 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 or a Recognised 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 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.

#### **Guidance**

~~2.2.51.~~ 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.

~~2.2.62.~~ 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.

~~2.2.73.~~ 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.

~~2.2.84.~~ 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.

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#### **2.4.3 "Service-based" Professional Clients**

- (a) 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;

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#### **Guidance**

- ~~(d)~~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.
- ~~(e)~~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.
- ~~(f)~~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.
- ~~(g)~~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:
  - (i) the individual has net assets of at least US\$500,000 (including any assets held directly or indirectly by that person), the calculation of which must exclude:
    - (A) property which is that person's primary residence or any loan secured on that residence;

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#### **Guidance**

- ~~(i)~~1. In the calculation of net assets in Rule 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.

- ~~(i)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.

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## **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;

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#### **Guidance**

- ~~(e)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.
- ~~(f)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. 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.

~~(g)~~3. An Authorised Person cannot provide Regulated Activities to a Retail Client unless it 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.

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### **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.
- (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.

#### **Guidance**

~~(e)~~1. Generally, an Authorised Person relying on this Rule should be able to demonstrate to the Regulator the due diligence process that it had undertaken to assess whether the client classification made by its head office or other branch of the same legal entity or a member of its Group substantially meets the client classification requirements in these Rules (e.g. documents verified and available) and, if any gaps are identified, how those gaps are effectively addressed.

~~(d)~~2. If an Authorised Person wishes to use any client classification undertaken by any third party other than its head office or another branch of the same legal entity, or a member of its Group, such an arrangement is generally treated as an outsourcing arrangement. In such case, the Authorised Person would need to meet the requirements in GEN 3.3.32 relating to outsourcing.

### **2.6.4 Group clients**

~~(a)~~ 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 and its Group members 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

- ~~(b)~~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.
- ~~(c)~~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.
- ~~(d)~~3. Depending on the nature of the arrangement under which Group members choose to carry on Regulated Activities for the benefit of the same Client, and the nature of the Regulated Activities involved, the risks associated with such arrangements may vary. Some of the common risks that could arise, and therefore would need to be addressed, include:
  - (i) conflicting legal requirements applicable to the carrying on of the Regulated Activities, particularly if the members of the Group are located in different jurisdictions; and
  - (ii) a Client not being able to clearly identify the actual service provider or providers and resulting exposure to legal accountability to the Client that may arise for all members of the Group.
- ~~(e)~~4. An Authorised Person must comply with, and must be able to demonstrate compliance with, the systems and controls requirements set out in GEN when relying on this Rule 2.6.4.

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### **3.2 Communication of Information and Marketing Material**

#### **General**

- 3.2.1 ~~(a)~~ When communicating information to a Person in relation to a Specified Investment or Regulated Activity, an Authorised Person must take reasonable steps to ensure that the communication is clear, fair and not misleading.

#### **Guidance**

- ~~(b)~~ A communication addressed to a Professional Client may not need to include the same information, or be presented in the same way, as a communication addressed to a Retail Client.

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### **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 Client with, or for a Market Counterparty;
- (b) Accepting Deposits;
- (c) .....

#### **3.4.2 Suitability Assessment**

- (a) Subject to Rule 3.4.2(b), an Authorised Person must not recommend to a Client a Specified Investment or the carrying on of a Regulated Activity where this involves provision of a service to a Client, or execute a Transaction on a discretionary basis for a Client, unless the Authorised Person has a reasonable basis for considering the recommendation or Transaction to be suitable for that particular Client. For this purpose, the Authorised Person must:
  - (i) undertake an appropriate assessment of the particular Client's needs, ~~and~~ objectives, and, financial situation, and also, to the extent relevant, risk tolerance, knowledge, experience and understanding of the risks involved; and

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### **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.

**Guidance**

- ~~(b)~~1. 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.
- ~~(c)~~2. 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.
- ~~(d)~~3. 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.

**6.4.2 Disclosures in Investment Research**

- (a) When an Authorised Person publishes Investment Research, it must take reasonable steps to ensure that the Investment Research:
- (i) clearly identifies the types of Clients for whom it is principally intended;
  - (ii) distinguishes fact from opinion or estimates, and includes references to sources of data and any assumptions used;
  - (iii) .....

**Guidance**

- ~~(d)~~ The requirements in this Rule 6.4.2 apply to an Authorised Person in addition to other requirements under FSMR and any rules made thereunder. For example, an Authorised Person is required to take reasonable steps to identify actual or potential conflicts of interest and then prevent or manage them under GEN 3.3.21-3.3.24. An Authorised Person must also have adequate procedures and controls when it prepares or publishes Investment Research.

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#### 6.4.4 Restriction on Own Account Transactions

- (a) An Authorised Person or its Associate must not knowingly execute 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.

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##### Guidance

- ~~(c)~~ The exceptions in Rule 6.4.4(b) allow an Authorised Person to continue to provide key services to the market and to its Clients even if the Authorised Person would be considered to have knowledge of the timing and content of the Investment Research which is intended for publication to Clients, for example when it is impractical for an Authorised Person to put in place an information barrier because the Authorised Person has few Employees or cannot otherwise separate its functions.

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#### 6.4.6 Disclosure

- (a) When an Authorised Person accepts a mandate to manage an Offer, it must take reasonable steps to disclose to its corporate finance Client:
- (i) the process the Authorised Person proposes to adopt in order to determine what recommendations it will make about allocations for the Offer;
  - (ii) .....

##### Guidance

- ~~(b)~~ It is the Regulator's expectation that an Authorised Person's procedures to identify and manage conflicts of interest should extend to the allocation process for an offering of Securities.

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#### 6.8 Record Keeping

##### 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

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**Guidance**

- (e) The effect of Rule 5.8.1(b)(iv) is to exclude from Rule 5.8.1(a) conversations or communications made by Investment Analysts, retail financial advisers, and persons carrying on back office functions.

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- 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**

- ~~7.2.8~~ 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.

**7.3 Communication of Information and Marketing Material**

**7.3.1 General Obligation**

- (a) When communicating any information in relation to Insurance Business, Insurance Intermediation or Insurance Management to a Person, an Authorised Person must take reasonable steps to ensure that the communication is clear, fair and not misleading.
- (b) An Insurer, Insurance Intermediary or Insurance Manager must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person under FSMR.
- (c) An Insurer or Insurance Intermediary must, when providing or directing Marketing Material to a Retail Client, comply with the requirements in Rule 3.2, if the Marketing Material relates to a Direct Long-Term Insurance Contract.

### Guidance

- (d) A communication addressed to a Professional Client may not need to include the same information, or be presented in the same way as, a communication addressed to a Retail Client.

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#### 7.11.6 Insurance Money Segregation

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

- (a) ....
- (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 ~~a~~Approved Assets;

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### 8. Additional Rules: Operating an MTF or OTF

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#### 8.2 Rules Applicable to MTF and OTF Operators – General

8.2.1 In addition to the general requirements applicable to Authorised Persons in COBS, GEN and elsewhere in the Rules, an Authorised Person carrying on the Regulated Activity of Operating an MTF (an "MTF Operator") or an Authorised Person carrying on the Regulated Activity of Operating an OTF (an "OTF Operator") must comply with the following requirements applicable to a Recognised Body or Recognised Investment Exchange set out in the MIR rulebook, reading references to Recognised Bodies or Recognised Investment Exchanges in the relevant rules as if they were references to the MTF Operator or OTF Operator:

- (a) MIR 2.6 (*Operational systems and controls*);
- (b) MIR 2.7.1 and 2.7.2 (*Transaction recording*);
- (c) MIR 2.8 (*Membership criteria and access*);
- (d) MIR 2.9 (*Financial crime and market abuse*);
- (e) MIR 2.11 (*Rules and consultation*);

- (f) MIR 3.3 (*Fair and orderly trading*);
- (g) MIR 3.7 (*Public disclosure*);
- (h) MIR 3.8 (*Settlement and Clearing facilitation services*);
- (i) MIR 3.10 (*Default Rules*).

**Guidance**

In assessing whether an MTF Operator or OTF Operator complies with the requirements set out above, the Regulator will take into account the general principle that users of an MTF or OTF anticipate less comprehensive regulatory protections.

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**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 .....

**Guidance**

9-1-41. 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.

9-1-52. However, there is no restriction against more than one Person being identified as Persons responsible for obtaining a Credit Rating relating to a Rating Subject. In such cases, a Credit Rating Agency should clearly identify those Persons as responsible Persons relating to the relevant Rating Subject.

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**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 .....

### **Guidance**

~~9.5.8~~ 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.

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#### **14.1.4 Holding or Controlling Client Assets**

Client Assets 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**

~~(d)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.

~~(e)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.

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#### **14.2 Client 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 Banks 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;

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#### **14.2.5 Client Accounts**

- (a) A Client Account in relation to Client Money 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;
  - (iii) is maintained in the name of:
    - (A) if a ~~Abu Dhabi Global Market~~ Domestic Firm, the Authorised Person; or
    - (B) if a non-~~Abu Dhabi Global Market~~ Domestic Firm, a Nominee Company controlled by the Authorised Person; and
  - (iv) includes the words "Client Account" in its title.
- (b) An Authorised Person can 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.

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#### Guidance

- ~~(e)~~1. An Authorised Person holds all Client Money in Client Accounts for its Clients as part of a common pool of money so those particular Clients do not have a claim against a specific sum in a specific account; they only have a pro rata claim to the Client Money 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 in a Client Account is to ensure that Money belonging to Clients is segregated and readily identifiable from Money belonging to the Authorised Person, such that, following a Pooling Event, Clients will have a joint property interest in the Client Money in proportion to each Client's entitlement in the Statutory Trust.
- ~~(f)~~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).
- ~~(g)~~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.

- ~~(h)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 following a Pooling Event is described in the Client Money Distribution Rules.

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#### 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 Rule 14.2.6(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 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 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 Rule 14.2.6(a)(ii) or Rule 14.2.6(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 Rule 14.2.6(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 Rule 14.2.6(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 Firm~~ 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.

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#### **14.2.8 Payment of Client Money to a Third-Party Agent**

- (a) Subject to Rule 14.2.8 (de), 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 Rule 14.2.8(a)(i) and Rule 14.2.8(a)(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 thirty 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 14.2.5(a)(iv).

#### **Guidance**

- (d) ~~The Regulator would consider twenty days as being a reasonable period for an Authorised Person to receive a written acknowledgement from the Third Party Agent.~~
- (e) If the Third-Party Agent does not provide the acknowledgement referred to in Rule 14.2.8(c) within a 30-day period, the Authorised Person must refrain from making further deposits of Client Money with that Third-Party Agent and withdraw any Client Money standing to the credit of that Client Account.

#### **Guidance**

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

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#### **14.2.9 Payment of Client Money from Client Accounts**

- (a) An Authorised Person must have procedures for ensuring all withdrawals from a Client Account are authorised.
- (b) Subject to Rule 14.2.9(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) Money paid out by way of cheque or other payable order under Rule 14.2.9(c) 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**

~~(e)1.~~ The effect of Rule 14.2.9(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.

~~(f)2.~~ An Authorised Person must have a system for ensuring no off-setting or debit balances occur on Client Accounts.

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**14.2.12 Reconciliation**

- (a) An Authorised Person 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) .....
- (h) The individual referred to in Rule ~~14.2.12(g)~~~~14.2.9(b)(i)~~ and ~~14.2.9(b)(ii)~~ must provide a written statement confirming the reconciliation has been undertaken in accordance with the requirements of this section.

- (i) .....

#### **14.2.15 Statutory Trusts**

- (a) An Authorised Person receives and holds Client Money as trustee in accordance with the following requirements in Rule 14.2.15.
- (b) .....
- (d) An Authorised ~~Firm~~ Person which is subject to the Client Money Rules receives and holds Client Money as trustee on the terms in Rule 14.2.14(d), subject to its obligations to hold Client Money as trustee under the relevant instrument of trust.

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#### **14.3 Client Investments**

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##### **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 ~~Firm~~ 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) ....

#### **14.4 Client 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 chapter applies to an Authorised Person that holds Client Money which is subject to the Client Money rules when a Pooling Event occurs.

**Guidance**

- ~~(c)~~1. This chapter seeks to facilitate the timely return of Client Money to a Client in the event of the Failure of an Authorised Person or third party at which the Authorised Person holds Client Money.
- ~~(d)~~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.

**14.4.2 Primary Pooling Events**

- (a) If the Authorised Person becomes insolvent, and there is (for whatever reason) a shortfall in Client Money in a particular Statutory Trust, the available funds will be distributed in accordance with the Client Money Distribution Rules.

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**Guidance**

- ~~(d)~~ A Primary Pooling Event triggers a notional pooling of all the Client Money, in every type of Client Money account, and the obligation to distribute it.

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**14.4.5 Secondary Pooling Events**

- (a) A Secondary Pooling Event occurs on Failure of a third party to which Client Money 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 paid into a Client Account at an unaffected bank, an amount equivalent to the shortfall in the amount of Client Money 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 held with third parties under Rules 14.2.18,14.3.6, and 14.3.7.

**Guidance**

- ~~(c)~~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.
- ~~(d)~~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.

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**15. Safe Custody Provisions**

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## 15.2 General Requirements

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

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15.4.5 An Authorised Person which intends to use a Client's Safe Custody Investments 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 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.

### Guidance

- ~~(e)~~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.
- ~~(f)~~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.
- ~~(g)~~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.

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