



AMENDMENTS No. 4 TO AIFC RULES ON DIGITAL ASSET ACTIVITIES

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Astana, Kazakhstan

In these amendments, underlining indicates a new text and strikethrough indicates a removed text.

(...)

2. RULES APPLICABLE TO DIGITAL ASSET TRADING FACILITY OPERATORS

(...)

2.2. Requirements for Digital Asset Trading Facility Operator authorisation

The AFSA may not grant authorisation or variation to operate a Digital Asset Trading Facility unless the applicant satisfies all of the following requirements:

- (1) general authorisation requirements applicable to the applicant under the Framework Regulations and other applicable rules, and
- (2) the applicant must ensure that it maintains at all times capital resources ~~in the amount~~ no lower than the capital requirement specified in Table 1 by reference to the activity that the Authorised Firm is licensed to conduct or, if it is authorised to conduct more than one such activity, the amount that is the higher or highest of the relevant amounts in Table 1.

Table 1

Regulated Activity	Capital requirement (USD)
Operating a Digital Asset Trading Facility	The higher of (i) 200,000 or (ii) an amount equal to sufficient working capital <u>operational expenses</u> in fiat currency to continue business for a period of 12 months, based on realistic forecasts for the business in different market conditions (both negative and positive scenarios)
Providing Custody (in relation to Digital Assets)	250,000

- (3) In determining whether the Digital Asset Trading Facility Operator meets the capital requirement(s) ~~and, in particular, has sufficient working capital to continue business on a go-forwards basis~~, the Digital Asset Trading Facility Operator must have regard to the following matters:
 - (a) the business carried out, or to be carried out by the Digital Asset Trading Facility Operator;
 - (b) the risks to the continuity of the services provided by, or to be provided by, the Digital Asset Trading Facility Operator, including any outsourced services (including services outsourced to a Group entity where applicable);

- (c) the liabilities to which the Digital Asset Trading Facility Operator is exposed or could be exposed to, including as a result of any failure by any third party; and
- (d) the means by which the Digital Asset Trading Facility Operator manages and, if the Digital Asset Trading Facility Operator is a member of a Group, by which other members of the Group manage, the occurrence of risk in connection with the Digital Asset Trading Facility Operator's business.

Guidance

Intangible assets, including goodwill, cannot be used as part of determining whether the capital requirement value is met ~~or whether the Digital Asset Trading Facility Operator has sufficient working capital~~, and must be disregarded when determining whether the requirements are met for the purposes of Table 1.

(...)

2.5 Requirements applicable to a Digital Asset Trading Facility Operator

2.5.1 Requirement to prepare Business Rules, Membership Rules and Admission to Trading Rules

(1) ~~Save where the AFSA otherwise directs, A a Digital Asset Trading Facility Operator must prepare Business Rules, Admission to Trading Rules, and Membership Rules (the "DATE Operator's Rules").~~ establish and maintain Business Rules governing relations between itself and the participants in the market, including but not limited to:

(a) Membership Rules, prepared in accordance with DAA 2.5.6;

(b) Admission to Trading Rules, prepared in accordance with DAA 2.5.7.

(2) A Digital Asset Trading Facility Operator must seek prior approval of ~~any of the DATE Operator's Rules~~ Business Rules and of ~~any~~ amendments to any of its Rules its Business Rules by obtaining approval of the AFSA.

(3) ~~Members and Clients~~ of a Digital Asset Trading Facility must be notified at least 10 days before approved by the AFSA ~~amendments are introduced to the relevant rules of the DATE Operator~~ Business Rules.

(...)

2.5.4 Financial penalties

If arrangements made pursuant to DAA 2.5.3. include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways:

(a) towards meeting expenses incurred by the Digital Asset Trading Facility Operator in the course of the investigation of the breach or course of conduct in respect of which the penalty is paid, or in the course of any appeal against the decision of the Digital Asset Trading Facility Operator in relation to that breach or course of conduct; or

(b) for the benefit of Members and ~~Clients~~ its clients of the Digital Asset Trading Facility Operator.

(...)

2.5.6 Membership Rules

The Membership Rules of a Digital Asset Trading Facility Operator must specify the obligations imposed on Members, ~~and Clients~~ of its facility arising from:

- (a) the constitution and administration of the facility;
- (b) where appropriate rules relating to transactions using its facilities;
- (c) admission criteria for Members, which must comply with DAA 2.6.2;
- (d) where appropriate rules and procedures for clearing and settlement of transactions; and
- (e) where appropriate rules and procedures for the prevention of Market Abuse, money laundering and Financial Crime.

(...)

2.6 Membership

2.6.1 Persons eligible for Membership

A Digital Asset Trading Facility Operator may only admit as a Member a Person who satisfies the admission criteria set out in its Membership Rules and which is:

- (a) an Authorised Firm ~~whose Licence permits it to carry out the Regulated Activities of Dealing in Investments as Principal or Dealing in Investments as Agent;~~
- (b) a Recognised Non-AIFC Member; or
- (c) a Body Corporate or an individual (natural person) which carries out the activity solely for its own investment purposes, where such trading does not constitute Dealing in Investments as Principal by way of business.

2.6.2 Admission criteria

(...)

(3) In assessing whether access to a Digital Asset Trading Facility Operator's facility is subject to criteria designed to protect the orderly functioning of the market and the interests of investors, the AFSA may have regard to whether:

- (a) the Digital Asset Trading Facility Operator limits access as a Member to such Persons:
 - (i) over whom it can with reasonable certainty enforce its rules contractually;
 - (ii) who have sufficient technical competence to use its facilities; and
 - (iii) if appropriate, who have adequate financial resources in relation to their exposure to the Digital Asset Trading Facility Operator;
- (b) indirect access to the Digital Asset Trading Facility Operator's facility is subject to suitable criteria, remains the responsibility of a Member of the Digital Asset Trading Facility Operator and is subject to the ~~Digital Asset Trading Facility Operator's rules~~ Business Rules; and

(c) the ~~Digital Asset Trading Facility Operator's rules~~ Business Rules:

- (i) set out the design and operation of the Digital Asset Trading Facility Operator's relevant systems;
- (ii) set out the risk for Members ~~and Clients~~ when accessing and using the Digital Asset Trading Facility Operator's facilities;
- (iii) contain provisions for the resolution of Members' ~~and Clients'~~ disputes and an appeal process for the decisions of the Digital Asset Trading Facility Operator;
- (iv) contain disciplinary proceedings, including any sanctions that may be imposed by the Digital Asset Trading Facility Operator against its Members ~~and Clients~~; and
- (v) set out other matters necessary for the proper functioning of the Digital Asset Trading Facility Operator and the facilities operated by it.

2.6.3 List of Members ~~and Clients~~

A Digital Asset Trading Facility Operator must be able to provide the AFSA with a list of Members ~~and Clients~~ of its facility on the AFSA's request.

(...)

2.7 Direct Electronic Access

2.7.1 Direct Electronic Access to the facility

For the purposes of these Rules, Direct Electronic Access means any arrangement, such as the use of the Member's trading code, through which a Member or the Clients of that Member are able to transmit electronically orders relating to Digital Assets directly to the facility provided by the Digital Asset Trading Facility Operator and includes arrangements which involve the use by a Person of the infrastructure of the Digital Asset Trading Facility Operator or the Member ~~or Client~~ or any connecting system provided by the Digital Asset Trading Facility Operator or Member ~~or Client~~, to transmit the orders and arrangements where such an infrastructure is not used by a Person.

(...)

2.8 Admission of Digital Assets to trading

(...)

2.8.2 Admission criteria

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(5) If a Digital Asset Trading Facility Operator decides to admit a Digital Asset to trading, the Digital Asset Trading Facility Operator is required to notify the AFSA ~~10 days prior to the date of~~ within 3 business days after the admission of the Digital Asset to trading.

Guidance:

The notification must include details of the internal assessment conducted and confirmation of compliance with DAA 2.8.

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2.8.4. Publication of key features document

(1) A Digital Asset Trading Facility Operator may permit a Digital Asset to trading only if it has published a key features document on its website about the Digital Asset.

(2) The key features document must include the following if known ~~(or, if not known, after having taken reasonable steps to determine this information, a clear statement must be provided that such information is not known)~~:

(a) information about the issuer and the individuals responsible for designing the Digital Asset;

(b) characteristics of the Digital Asset, including rights attaching to the Digital Asset and any project or venture to be funded in connection with the Digital Asset (if relevant);

(c) details of Persons responsible for performing obligations associated with the Digital Asset and details of where and against whom rights conferred by the Digital Asset may be exercised;

(d) information on the underlying DLT or similar technology used for the Digital Asset, including details of the technology that is used to issue, store or transfer the Digital Asset and any interoperability with other DLT;

(e) information on the underlying technology used by the Digital Asset Trading Facility Operator, as relevant to making a decision to participate in the Digital Asset, including information on relevant protocols and technical standards adhered to;

(f) details about how ownership of the Digital Asset is established, certified or otherwise evidenced (to the extent relevant);

(g) how the Digital Asset will be valued by the Digital Asset Trading Facility Operator, and an explanation of how this is carried out and what benchmarks, indices or third parties relied on;

(h) the risks relating to the volatility and unpredictability of the price of the Digital Asset;

(i) in the case of a Fiat stablecoin or Commodity stablecoin based on reserves, details about the reserves backing that Fiat stablecoin or Commodity stablecoin and the stabilisation and redemption mechanisms;

(j) cyber-security risks associated with the Digital Asset or its underlying technology, including whether there is a risk of loss of the Digital Asset in the event of a cyberattack, and details of steps that have been taken, or can be taken, to mitigate those risks;

(k) the risks relating to fraud, hacking and Financial Crime;

(l) any other information relevant to the Digital Asset that would reasonably assist the Client to understand the Digital Asset and whether to participate in the Digital Asset, or otherwise use the service(s) being offered to the Client.;

Guidance: The Digital Asset white paper is a document outlining the main economic and technical aspects of a specific Digital Asset. The key features document is a document outlining the main characteristics of the Digital Asset in a simple format to provide potential investors with the aims and benefits of the Digital Asset, along with the relevant risks and limitations. The content of the Digital Asset white paper and key features document should not conflict each other. A Digital Asset Trading Facility Operator may incorporate the

Digital Asset white paper by reference into the key features document if it meets the purpose and information requirements set out under Rule 2.8.4(2) and this Guidance.

(...)

2.8.7 Review of compliance

The Digital Asset Trading Facility Operator must maintain arrangements to review, semi-annually ~~review~~ or at such other frequency approved by the AFSA, whether the Digital Assets admitted to trading on its facilities comply with the Admission to Trading Rules.

2.8.8. Admission of Digital Asset Derivatives

(1) A Digital Asset Trading Facility Operator may admit a class of Digital Asset Derivatives to trading if it has obtained the AFSA's approval to do so.

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(...)

2.9 Suspending or removing Digital Assets from trading

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2.9.3 Publication of decision

(1) Where the Digital Asset Trading Facility Operator suspends or removes any Digital Asset from trading on its facility, it must notify the AFSA ~~in advance~~ immediately and make that decision public by issuing a public notice on its website.

(2) Where the Digital Asset Trading Facility Operator lifts a suspension or re-admits any Digital Asset to trading on its facility, it must notify the AFSA ~~in advance~~ immediately and make that decision public by issuing a public notice on its website.

(3) Where the Digital Asset Trading Facility Operator has made any decisions on re-admission, suspension, or removal of Digital Assets to or from trading on its facility, it must have adequate procedures for notifying Members ~~and Clients~~ of such decisions.

(...)

2.10 Transparency obligations

2.10.1 Pre-trade disclosure

(1) A Digital Asset Trading Facility Operator must disclose to its Members ~~and Clients~~ the following information relating to trading of Digital Assets on its facility:

(a) the current bid and offer prices, and volume of Digital Assets traded on its systems on a continuous basis during normal trading hours;

(b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Digital Assets;

(c) the methods of communication to be used between the Digital Asset Trading Facility Operator and its Members ~~and Clients~~;

(d) the languages in which the Digital Asset Trading Facility Operator and its Members ~~and Clients~~ may communicate;

(e) a statement that the Digital Asset Trading Facility Operator has the appropriate Licence to operate, and the details of that Licence;

- (f) a description, which may be in summary form, of any conflicts of interest which may arise in relation to potential transaction, and how the Digital Asset Trading Facility Operator will manage these to ensure the fair treatment of Members and Clients;
- (g) any cancellation or withdrawal rights that Members and Clients may have;
- (h) any rights of Members and Clients may or may not have to terminate a trade early or unilaterally under the terms of the Digital Asset Trading Facility Operator's facilities, including whether any fees or costs may be imposed in connection with exercising such a right;
- (i) any specific technological requirements that the Members and Clients must have in place in order to use the Digital Asset Trading Facility; and
- (j) any other information relating to Digital Assets which would materially promote transparency for Members and Clients relating to trading.

(...)

2.11.1 Clients of a Digital Asset Trading Facility Operator

Members of a Digital Asset Trading Facility Operator ~~and their clients~~ are Clients of a Digital Asset Trading Facility Operator.

(...)

2.11.3 Calculation of an individual Client's net assets

(1) For the purposes of calculating an individual Client's net assets to treat him as an Assessed Professional Client under Rule 2.5.1(a) of the COB, the Digital Asset Trading Facility Operator:

- (a) must exclude the value of the primary residence of the Client;
- (b) must exclude Digital Assets belonging to the Client that are not admitted to trading on a facility of a Digital Asset Trading Facility Operator;
- (c) must include only ~~30%~~ 50% of the market value of a Digital Asset admitted to trading, which belongs to the Client, but ~~must~~ can include 100% of the market value of Fiat and Commodity stablecoin backed by reserves, which belong to the Client; and
- (d) may include any other assets held directly or indirectly by that Client.

(...)

3. RULES APPLICABLE TO DIGITAL ASSET SERVICE PROVIDERS

3.1-1 Application

(1) This Part 3 applies to a Person carrying on, in or from the AIFC, one or more of the following Regulated Activities in relation to Digital Assets:

- (a) Dealing in Investments as Principal;
- (b) Dealing in Investments as Agent;
- (c) Managing Investments;
- (d) Managing a Collective Investment Scheme;
- (e) Providing Custody;
- (f) Arranging Custody;

- (g) Advising on Investments; and
- (h) Arranging Deals in Investments.

(2) The requirements in DAA 3.3 and 3.4 do not apply if the services provided on behalf of, or for, Clients do not involve the holding or control of Digital Assets, nor the use of DLT or similar technology to carry on the Regulated Activities in relation to Digital Assets.

(3) A Digital Asset is held or controlled by a Digital Asset Service Provider if:

(a) the Digital Asset is directly held by the Digital Asset Service Provider in an account or Digital wallet; or

(b) the Digital Asset is held in an account or Digital wallet in the Digital Asset Service Provider's name; or

(c) the Digital Asset is held by a legal entity, or in an account or Digital wallet in the name of the legal entity that is controlled by the Digital Asset Service Provider; or

(d) the private key or seed phrase of the Digital wallet is held or controlled by the Digital Asset Service Provider.

(4) A Digital Asset Service Provider must incorporate into its internal documents the substance of additional provisions relevant to Derivatives to be found in the COB Rules, for the purpose of regulating operations in Digital Assets Derivatives.

(...)

3.2.Requirements for Digital Asset Service Providers

(1) The AFSA may not grant authorisation or variation of a Licence to a Person to carry on the Regulated Activities in relation to Digital Assets unless the applicant satisfies all of the following requirements:

(a) general authorisation requirements applicable to the applicant under the Framework Regulations and other applicable rules, and

(b) the applicant must ensure that it maintains at all times capital resources ~~in the amount~~ no lower than the capital requirement specified in Table 2 by reference to the activity that the Digital Asset Service Provider is authorised to conduct or, if it is authorised to conduct more than one such activity, the amount that is the higher or highest of the relevant amounts in Table 2.

(...)

(2) In determining whether a Digital Asset Service Provider meets the capital requirement(s) ~~and, in particular, has sufficient working capital to continue business on a go-forwards basis,~~ the Digital Asset Service Provider must have regard to the following matters:

(a) the business carried out, or to be carried out by the Digital Asset Service Provider;

(b) the risks to the continuity of the services provided by, or to be provided by, the Digital Asset Service Provider, including any outsourced services (including services outsourced to a Group entity where applicable);

(c) the liabilities to which the Digital Asset Service Provider is exposed or could be exposed to, including as a result of any failure by any third party; and

(d) the means by which the Digital Asset Service Provider manages and, if the Digital Asset Service Provider is a member of a Group, by which other members of the Group manage, the occurrence of risk in connection with the Digital Asset Service Provider's business.

Guidance

Intangible assets, including goodwill, cannot be used as part of determining whether the capital requirement value is met ~~or whether the Digital Asset Service Provider has sufficient working capital~~, and must be disregarded when determining whether the requirements are met for the purposes of Table 2.

(...)

3.3.2. Board of Directors of a Digital Asset Service Provider

(1) A Digital Asset Service Provider must have an effective Board of Directors which is collectively accountable for ensuring that the Digital Asset Service Provider's business is managed prudently and soundly. ~~At least one third of the Board of Directors should comprise independent Directors.~~

~~Note: Rule 2.3.2(1) will come into force 12 months after the commencement of these Rules.~~

(...)

3.4.8 Technology audit reports

~~(1) This Rule applies to a Digital Asset Service Provider that:~~ [intentionally omitted]

~~(a) holds or controls Digital Assets;~~

~~(b) relies on DLT or similar technology to carry on one or more of the following Regulated Activities in relation to Digital Assets:~~

~~(i) Dealing in Investments as Principal;~~

~~(ii) Dealing in Investments as Agent;~~

~~(iii) Arranging Deals in Investments;~~

~~(iv) Managing Investments;~~

~~(v) Advising on Investments;~~

~~(vi) Providing Custody; or~~

~~(vii) Arranging Custody; or~~

~~(viii) is Managing a Collective Investment Scheme where 10% or more of the gross asset value of the Fund Property of the Fund consists of Digital Assets.~~

(2) The ~~Authorised Firm~~ Digital Asset Service Provider must:

- (a) appoint a suitably qualified independent third-party professional to:
 - (i) carry out an annual audit of the ~~Authorised Firm's~~ Digital Asset Service Provider's compliance with the technology resources and governance requirements that apply to it; and
 - (ii) produce a written report which sets out the methodology and results of that annual audit, confirms whether the requirements referred to in DAA 3.4.7 have been met and lists any recommendations or areas of concern;
- (b) submit to the AFSA a copy of the report referred to in DAA 3.4.8. (2)(a)(ii) within 6 months of the financial year end; and
- (c) be able to satisfy the AFSA that the independent third party professional appointed to carry out the annual audit has the relevant expertise to do so, and that the ~~Authorised Firm~~ Digital Asset Service Provider has done proper due diligence to satisfy itself of that fact.

3.8 Requirements for Digital Asset Service Providers Managing Investments and a Collective Investment Scheme

(...)

Guidance: A Digital Asset Service Provider which carries on a Regulated Activity of Managing a Collective Investment Scheme in relation to Digital Assets is an Authorised Firm to which provisions of the following AIFC Acts apply either directly or in respect of its officers and Employees who are Approved or Designated Individuals:

FSFR (in whole);

AML (in whole);

CIS (in whole);

Chapter 2 (Client classification) of the COB;

Chapter 3 (Communication with Clients and Financial Promotions) of the COB;

Chapter 4 (Key information and client agreement) of the COB;

Chapter 7 (Conflicts of interest) of the COB;

Chapter 15 (Complaints handling and dispute resolution) of the COB;

Chapter 16 (Record keeping and internal audit) of the COB;

Chapter 2 (Controlled and Designated Functions) of the GEN;

Chapter 3 (Control of Authorised Persons) of the GEN;

Chapter 4 (Core Principles) of the GEN;

Chapter 5 (Systems and Controls) of the GEN;

Chapter 6 (Supervision) of the GEN; and

Rules on Currency Regulation and Provision of Information on Currency Transactions in the AIFC (in whole).

(...)

3.11.2. Calculation of an individual Client's net assets

(1) For the purposes of calculating an individual Client's net assets to treat him as an Assessed Professional Client under Rule 2.5.1(a) of the COB, the Digital Asset Service Provider:

(a) must exclude the value of the primary residence of the Client;

(b) must exclude Digital Assets belonging to the Client that are not admitted to trading on a facility of the Digital Asset Trading Facility Operator;

(c) must include only ~~30%~~ 50% of the market value of a Digital Asset admitted to trading, which belongs to the Client, but ~~must~~ can include 100% of the market value of Fiat and Commodity stablecoins backed by reserves, which belong to the Client; and

(d) may include any other assets held directly or indirectly by that Client.

4. RULES APPLICABLE TO AUTHORISED FIRMS PROVIDING MONEY SERVICES IN RELATION TO DIGITAL ASSETS AND ISSUANCE OF FIAT STABLECOINS

(...)

4.4 Governance arrangements

(...)

(2) A Digital Asset Trading Facility Operator must have an effective Board of Directors which is collectively accountable for ensuring that the Digital Asset Trading Facility Operator's business is managed prudently and soundly. ~~At least one third of the Board of Directors should comprise independent Directors.~~

~~*Note: Rule 4.4 (2) will come into force 12 months after the commencement of these Rules.*~~

(...)