AIFC AUTHORISED MARKET INSTITUTION RULES

(AMI)

AIFC RULES NO. FR0002 OF 2017

(with amendments as of 9 December 2023, which commence on 1 January 2024)

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Astana, Kazakhstan

CONTENTS

Guidance: Purpose and application of AMI

The rules and guidance in AMI complement Chapter 2 of Part 3 of the Framework Regulations (Licensing of Authorised Market Institutions) and Part 6 of the Framework Regulations (Capital Markets), where relevant. AMI also contains rules in relation to the supervision of Authorised Market Institutions which complement the provisions in Part 8 of the Framework Regulations (Supervision of Authorised Persons) and Chapter 7 of the GEN rulebook (Supervision). The purpose of the rules and guidance in AMI is to set out:

- the licensing requirements, or standards, which an applicant must satisfy to be granted a Licence to carry on either of the Market Activities of Operating an Investment Exchange and Operating a Clearing house at all times thereafter. Reference in these Rules and guidance to an "Authorised Market Institution" or any type of an Authorised Market Institution should be taken to refer also to an applicant where relevant;

- the various regulatory functions that an Authorised Market Institution must perform in relation to admitting Securities or Units in a Listed Fund to trading, operating an Official List and enforcing its Business Rules; and

- the supervisory regime to which such an Authorised Market Institution will be subject on an ongoing basis, including requirements in respect of its relationship with the AFSA.

The application of the rules in AMI is as follows:

- Chapter 1 contains introductory provisions applicable to all Authorised Market Institutions.

- Chapter 2 contains rules and guidance applicable to all Authorised Market Institutions.

- Chapter 2-1 contains rules and guidance applicable to Authorised Market Institutions Operating a facility for Security Tokens.

- Chapter 3 contains additional rules and guidance applicable to Authorised Investment Exchanges.

- Chapter 4 contains additional rules and guidance applicable to Authorised Clearing Houses (including Authorised Central Counterparties).

- Chapter 5 contains rules in relation to the supervision of Authorised Market Institutions.

- **[*intentionally omitted*]**

- Chapter 7 contains additional rules and guidance applicable to Authorised Crowdfunding Platforms.

1. INTRODUCTION

1.1. Introduction

1.1.1. Definitions

(1) An Authorised Market Institution is a Centre Participant which has been licensed by the AFSA to carry on one or more Market Activities. An Authorised Market Institution can be an Authorised Investment Exchange, an Authorised Clearing House and/or an Authorised Crowdfunding Platform.

(2) An Authorised Investment Exchange is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating an Investment Exchange.

(3) An Authorised Clearing House is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating a Clearing House.

(4) A central counterparty is a legal Person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

(5) An Authorised Central Counterparty is a central counterparty which is declared by an order made by the AFSA under these Rules for the time being in force to be an Authorised Central Counterparty.

(6) A Member of an Authorised Market Institution is a Person who is entitled, under an arrangement or agreement between him and the Authorised Market Institution, to use that institution's facilities.

(7) **[*intentionally omitted*]**

(8) An Authorised Crowdfunding Platform is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating a Loan Crowdfunding Platform and/or Operating an Investment Crowdfunding Platform.

(9) Operating a facility for Security Tokens in relation to an Authorised Market Institution means Operating an Investment Exchange on which Security Tokens are traded or Operating a Clearing House on which Security Tokens are cleared.

1.1.2. Outsourcing

An Authorised Market Institution may satisfy the requirements applying to it under these Rules by making arrangements for functions to be performed on its behalf by any other Person. In such circumstances:

(a) An Authorised Market Institution must, before entering into any material outsourcing arrangements with a service provider, notify AFSA of such an arrangement.

(b) For the avoidance of doubt, the requirement in sub-paragraph (a) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted a Licence.

(c) Outsourcing arrangements made by an Authorised Market Institution do not affect the responsibility of the Authorised Market Institution to satisfy the requirements applying to it, but there is in addition a requirement applying to the Authorised Market Institution that

the Person who performs (or is to perform) the functions is a fit and proper Person who is able to perform them.

(d) An Authorised Market Institution that outsources any functions must comply with the outsourcing requirements in GEN.

2. RULES APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

2.1. Requirements in GEN

Guidance

An Authorised Market Institution is an Authorised Person to which the following provisions of GEN are applicable either directly or in respect of its officers and Employees who are Approved Individuals or Designated Individuals:

(a) GEN 2: Controlled and Designated Functions;

(b) GEN 3: Control of Authorised Persons;

(c) GEN 4: Core Principles;

(d) GEN 5: Systems and Controls;

(e) GEN 6: Supervision

Rules in this chapter supplement, and must be read in conjunction with, the Rules in GEN.

Guidance: risk management requirements

(1) An Authorised Market Institution is subject to the risk management requirements in GEN 5.8. Additional risk management requirements are prescribed for Authorised Market Institutions Operating a Clearing House in AMI 4.2 and 4.3.

(2) In assessing the adequacy of an Authorised Market Institution's systems and controls for identifying, assessing and managing risks, the AFSA would also have regard to the extent to which such systems and controls enable the Authorised Market Institution to:

(a) identify all the general, operational, legal, compliance, technology, credit, market and other risks wherever they arise in its activities;

(b) measure and mitigate the different types of risk;

(c) allocate responsibility for risk management to Persons with appropriate levels of knowledge and expertise; and

(d) provide sufficient and reliable information to its officers and Employees who are Approved Individuals or Designated Individuals and, where relevant, the Governing Body of the Authorised Market Institution and the AFSA.

(3) As part of assessing the adequacy of risk controls, the AFSA would also consider how internal and external audits operate in the context of systems and controls. In doing so the following factors may be considered:

(a) the size, composition and terms of reference of any audit committee of the Authorised Market Institution's Governing Body;

(b) the frequency and scope of external audit;

(c) the provision and scope of internal audit;

(d) the staffing and resources of the Authorised Market Institution's internal audit department;

(e) the internal audit department's access to the Authorised Market Institution's records and other relevant information; and

(f) the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the Authorised Market Institution.

(4) In addition, the AFSA will also consider the adequacy of the risk management function, in particular:

(a) the access which the individuals performing risk management function have to the Authorised Market Institution's records and other relevant information; and

(b) the position, responsibilities and reporting lines of the risk management department and its relationship with other departments of the Authorised Market Institution.

2.2. Financial resources

2.2.1. Minimum capital requirement

An Authorised Market Institution must hold the following minimum capital:

(a) an amount equal to 6 months' operational expenses; plus

(b) unless the AFSA directs otherwise, an additional amount of up to a further 6 months' operational expenses.

2.3. Conflicts of interest

2.3.1. Conflicts of interest – core obligation

An Authorised Market Institution must take reasonable steps, including the maintenance of adequate systems and controls, governance and internal policies and procedures, to ensure that the performance of its regulatory functions is not adversely affected by its commercial interests.

Guidance: regulatory functions of Authorised Market Institution

The regulatory functions of an Authorised Market Institution include, as appropriate:

- its obligations under AMI to monitor and enforce compliance with its membership rules, Business Rules, Direct Electronic Access Rules;
- its obligation to prevent, detect and report market abuse or financial crime; and
- its obligations in respect of admission of Investments to an Official List, to Trading or to Clearing.

2.3.2. Conflicts of interest – identification and management

For the purposes of compliance with AMI 2.3.1, an Authorised Market Institution must:

(a) identify conflicts between the interests of the Authorised Market Institution, its shareholders, owners and operators and the interests of the Persons who make use of its facilities or the interests of the trading venues operated by it; and

(b) manage or disclose such conflicts so as to avoid adverse consequences for the sound functioning and operation of the trading venues operated by the Authorised Market Institution and for the Persons who make use of its facilities.

2.3.3. Conflicts of interest – personal account transactions

An Authorised Market Institution must establish and maintain adequate policies and procedures to ensure that its Employees do not undertake personal account transactions in Investments in a manner that creates or has the potential to create conflicts of interest.

2.3.4. Conflicts of interest – code of conduct

An Authorised Market Institution must establish a code of conduct that sets out the expected standards of behaviour for its Employees, including clear procedures for addressing conflicts of interest. Such a code must be binding on Employees.

2.4. Technology resources

2.4.1. Sufficient resources

An Authorised Market Institution must have sufficient technology resources to continually operate, maintain and supervise its facilities.

2.4.2. Confidentiality

The Authorised Market Institution must take reasonable steps to ensure that its information, records and data are secure and the confidentiality is maintained

2.4.3. Cyber-security

The Authorised Market Institution must take reasonable steps to ensure that its information technology systems are reliable and adequately protected from external attack or incident.

2.4.4. Resources of Members

(1) An Authorised Market Institution must ensure that its Members and other participants on its facilities have sufficient and secure technology resources which are compatible with its own.

(2) The requirements in (1) do not apply to:

(a) an Authorised Crowdfunding Platform (or its Clients).

(b) ***[intentionally omitted]***

2.4.5. On-going monitoring

For the purposes of meeting the requirement in AMI 2.4.1, an Authorised Market Institution must have adequate procedures and arrangements for the evaluation, selection and on-going maintenance and monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) testing information technology systems before live operations in accordance with the requirements in AMI 2.4.6 and 2.4.7;

(c) real time monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii) business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

2.4.6. Testing of technology systems

An Authorised Market Institution must, before commencing live operation of its information technology systems or any updates thereto, use development and testing methodologies in line with internationally accepted testing standards in order to test the viability and effectiveness of such systems. For this purpose, the testing must be adequate for the Authorised Market Institution to obtain reasonable assurance that, among other things:

(a) the systems enable it to comply with all the applicable requirements, including legislation, on an on-going basis;

(b) the systems can continue to operate effectively in stressed market conditions;

(c) the systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders;

(d) the systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility; and

(e) any risk management controls embedded within the systems, such as generating automatic error reports, work as intended.

2.4.7. Testing relating to Members' technology systems

(1) An Authorised Market Institution must implement standardised conformance testing procedures to ensure that the systems which its Members are using to access facilities operated by it have a minimum level of functionality that is compatible with the Authorised Market Institution's information technology systems and will not pose any threat to fair and orderly conduct of its facilities.

(2) An Authorised Market Institution must also require its Members, before commencing live operation of any electronic trading system, user interface or a trading algorithm, including any updates to such arrangements, to use adequate development and testing methodologies to test the viability and effectiveness of their systems, to include system resilience and security.

(3) For the purposes of (2), an Authorised Market Institution must require its Members:

(a) to adopt trading algorithm tests, including tests in a simulation environment which are commensurate with the risks that such a strategy may pose to itself and to the fair and orderly functioning of the facility operated by the Authorised Market Institution; and

(b) not to deploy trading algorithms in a live environment except in a controlled and cautious manner.

(4) The requirements in (1)-(3) do not apply to:

(a) an Authorised Crowdfunding Platform (or its Clients).

(b) ***[intentionally omitted]***

2.4.8. Regular review of systems and controls

(1) An Authorised Market Institution must undertake regular review and updates of its information technology systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an Authorised Market Institution must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

2.5. Business Rules

2.5.1. Requirement to prepare Business Rules

(1) Save where the AFSA otherwise directs, an Authorised Market Institution must 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 AMI 2.6, governing the admission of Members and any other Persons to whom access to its facilities is provided;

(b) Direct Electronic Access Rules, prepared in accordance with AMI 2.7, in case a Direct Electronic Access is available at the Authorised Market Institution, setting out the rules and conditions pursuant to which its Members may provide their clients with Direct Electronic Access to the Authorised Market Institution's trading systems;

(c) Default Rules, prepared in accordance with either AMI 3.5 or AMI 4.6, governing action that may be taken in respect of unsettled Market Contracts in the event of a Member being, or appearing to be, unable to meet its obligations;

(d) Admission to Trading Rules, prepared in accordance with AMI 3.2, or Admission to Clearing Rules, prepared in accordance with AMI 4.1, governing the admission of Securities or Units in a Listed Fund, or Commodity Derivatives, or Environmental Instruments to trading, or clearing and settlement, as appropriate to its facilities;

(e) Listing Rules, prepared in accordance with AMI 3.6, setting out the rules and conditions applicable to a Person who wishes to have Securities or Units in a Listed Fund included in an Official List; and

(f) any other matters necessary for the proper functioning of the Authorised Market Institution and the facilities operated by it.

(2) An Authorised Market Institution must incorporate into its Business Rules the substance of any additional provisions to be found in the COB Rules, with any modifications which seem to the Institution to be appropriate, for the purpose of regulating the conduct of business of a Person referred to in AMI 2.6.1(1)(c) as a Member of the Institution for the purposes of dealing in Commodity Derivatives or Environmental Instruments.

(3) An Authorised Market Institution must incorporate into its Business Rules the substance of additional provisions to be found in the COB Rules, for the purpose of regulating the conduct of business of a Person referred to in AMI 2.6.1(1)(d) as a Member of the Institution for the purposes of dealing in Security Tokens.

2.5.2. Content and effect of Business Rules

An Authorised Market Institution's Business Rules must:

(a) be based on objective criteria;

(b) be non-discriminatory;

(c) be clear and fair;

(d) set out the Members' and other participants' obligations:

(i) arising from the Authorised Market Institution's constitution and other administrative arrangements;

(ii) when undertaking transactions on its facilities; and

(iii) relating to professional standards that must be imposed on staff and agents of the Members and other participants when undertaking transactions on its facilities;

(e) be made publicly available free of charge;

(f) contain provisions for the resolution of Members' and other participants' disputes and an appeal process from the decisions of the Authorised Market Institution, whether by an internal but independent body or otherwise; and

(g) contain disciplinary procedures, including any sanctions that may be imposed by the Authorised Market Institution against its Members and other participants; and

(h) be enforceable against the Members and other participants.

2.5.3. Review, amendment and consultation

The Authorised Market Institution must ensure that appropriate procedures are adopted for it to keep its Business Rules under annual review and to amend them. The procedures must include procedures for consulting users of the Authorised Market Institution's facilities in appropriate cases.

2.5.4. Amendment of rules

Any amendment to an Authorised Market Institution's Business Rules must, prior to the amendment being effective, be:

(a) made available for market consultation for no less than 30 days; and

(b) approved by the AFSA.

2.5.5. Waiver of consultation requirement

The AFSA may waive or modify the requirement for market consultation in AMI 2.5.4(a) where it considers it necessary or desirable to do so, including but not limited to, cases of emergency, force majeure, typographical errors, minor administrative matters, or to comply with applicable laws.

2.5.6. Monitoring and enforcing compliance with Business Rules

The Authorised Market Institution must have effective arrangements for monitoring and enforcing compliance with its Business Rules including procedures for:

(a) prompt investigation of complaints made to the Authorised Market Institution about the conduct of Persons in the course of using the Authorised Market Institution's facilities; and

(b) where appropriate, disciplinary action resulting in financial and other types of penalties.

2.5.7. Financial penalties

Where arrangements made pursuant to AMI 2.5.6 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 Authorised Market Institution 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 Authorised Market Institution in relation to that breach or course of conduct; or

(b) for the benefit of users of the Authorised Market Institution's facilities.

2.5.8. Appeals

Arrangements made pursuant to AMI 2.5.6 must include provision for fair, independent and impartial resolution of appeals against decisions of the Authorised Market Institution.

The requirements in AMI 2.5 do not apply to an Authorised Crowdfunding Platform.

2.6. Membership

2.6.1. Persons eligible for Membership

(1) An Authorised Market Institution, may only admit as a Member a Person who satisfies admission criteria set out in its Membership Rules and who is either:

(a) an Authorised Firm whose Licence permits it to carry on the Regulated Activities of Dealing in Investments;

(b) a Recognised Non-AIFC Member;

(c) Person intending to deal in Commodity Derivatives or Environmental Instruments who meets the criteria in GEN 1.1.14; or

(d) A Person not referred to in (a), (b), or (c) with access to the facility, on which Security Tokens are traded or cleared or both traded and cleared, in respect of their trading or clearing of Security Tokens only.

(2) ***[intentionally omitted]***

(a) ***[intentionally omitted]***

(b) ***[intentionally omitted]***

(c) ***[intentionally omitted]***

(3) An Authorised Market Institution must ensure that a Member who is a Person referred to in (1)(c) is a Professional Client and treat the Person as such.

For the purposes of this rule, Professional Client has the same meaning as defined in COB Chapter 2.

(4) Before admitting a Person referred to in (1)(c) as a Member, an Authorised Market Institution must undertake due diligence to ensure that such a Person:

(a) is of sufficient good repute;

(b) has a sufficient level of competence, experience and understanding of relevant Investments, Financial Services, transactions and any associated risks, including appropriate standards of conduct for its staff permitted to use its order entry system; and

(c) has adequate organisational arrangements, including financial and technological resources, which are appropriate to allow it to discharge its obligations in respect of their category of membership at the Authorised Market Institution.

(5) An Authorised Market Institution must keep records of the procedures which it has followed under (3), including any documents that evidence the Person's assessment. The records must be kept for at least six years from the date on which the business relationship with a Person ended.

(6) Before admitting a Person referred to in (1)(d), an Authorised Market Institution must undertake due diligence to ensure that the Person:

(a) is of sufficient good repute;

(b) has a sufficient level of competence, experience and understanding of relevant Investments, Financial Services, transactions and any associated risks, including appropriate standards of conduct for its staff permitted to use its order entry system;

(c) has adequate financial and technological resources to meet the Business Rules of the facility;

(d) does not pose any operational risks to the orderly and efficient functioning of the facility's trading or clearing systems; and

(e) does not pose any money laundering or terrorist financing risks.

2.6.2. Admission criteria

An Authorised Market Institution must ensure that access to its facilities is subject to objective criteria designed to protect the orderly functioning of the market and the interests of investors.

2.6.3. Membership Rules

The Membership Rules of an Authorised Market Institution must specify the obligations imposed on users or Members of its facilities arising from:

(a) the constitution and administration of the Authorised Market Institution;

(b) where appropriate rules relating to transactions on its trading venues;

(c) admission criteria for Members;

(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 in accordance with AMI 2.8.

2.6.4. Undertaking to comply with AIFC rules

An Authorised Market Institution may not admit as a Member a Person referred to in 2.6.1.(1)(b) or (c) unless the Person:

(a) agrees in writing to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) where the Recognised Non-AIFC Member is incorporated outside the Republic of Kazakhstan, appoints and maintains at all times, an agent for service of process in the AIFC.

Guidance

(1) Service of process is the procedure by which a party to a lawsuit (Claimant) gives an appropriate notice of initial legal action (Claim Form) to another party (Defendant), in an effort to exercise jurisdiction over that Person so as to enable that Person to respond to the proceeding before the court. Notice is furnished by delivering a set of court documents (called "process") to the Person to be served. Service of a Claim Form is defined in clause 4.9 of the AIFC Court Rules. Acknowledgement of process and consequences of not filing an acknowledgment of service are defined in clause 7.4 of the AIFC Court Rules. Methods of service are defined in Part 5 of the AIFC Court Rules.

(2) An agent for service of process is a service provider having legal and real presence in the AIFC.

(3) The main role of agent for service of process is to receive service of process in the AIFC on behalf of a Person, acknowledge the service of process, and forward the process to such Person once it is received.

2.6.5. Lists of users or Members

The Authorised Market Institution must make arrangements regularly to provide the AFSA with a list of its Members.

The requirements in AMI 2.6 do not apply to an Authorised Crowdfunding Platform.

2.7. Direct Electronic Access

2.7.1. Direct Electronic Access

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 Securities, or Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments directly to the facility provided by the Authorised Market Institution.

Guidance:

A Person who is permitted to have Direct Electronic Access to an Authorised Market Institution's facilities through a Member is not, by virtue of such permission, a Member of the Authorised Market Institution.

2.7.2. Direct electronic access – general conditions

An Authorised Market Institution may only permit a Member specified in AMI 2.6.1(1)(a) and (b) to provide its clients Direct Electronic Access to the Authorised Market Institution's facilities where the clients meet the suitability criteria established by the Member in order to meet the requirements in AMI 2.7.3.

2.7.3. Direct electronic access – criteria, standards and arrangements

An Authorised Market Institution which permits its Members to have direct electronic access to its trading facilities or permits its Members to allow their clients to have Direct Electronic Access to its trading facilities must:

(a) ensure that a Member allowing its clients to have direct electronic access to the trading facilities of an Authorised Market Institution is an Authorised Person;

(b) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(c) be able to identify orders and trades made through Direct Electronic Access;

(d) be able to distinguish and, if necessary, stop orders or trades made by a client using Direct Electronic Access provided by the Member without affecting the other orders or trades made or executed by that Member; and

(e) have arrangements in place to suspend or terminate the provision of Direct Electronic Access in the case of non-compliance with this sub-paragraph.

2.7.4. Direct electronic access rules

An Authorised Market Institution operating a trading venue which permits Direct Electronic Access through it systems must set out and publish the rules and conditions pursuant to which its Members specified in AMI 2.6.1(1)(a) and (b) may provide Direct Electronic Access to their clients. Those rules and conditions must at least cover the specific requirements set out below:

(a) A Member must retain responsibility for the orders and trades executed by the clients who are using Direct Electronic Access.

(b) A Member must have adequate mechanisms to prevent the clients placing or executing orders using Direct Electronic Access in a manner that would result in the Member exceeding its position or margin limits.

(c) A Member must conduct annually or on request from AFSA a due diligence assessment of its prospective Direct Electronic Access clients to ensure they meet the rules of the trading venue to which it offers access.

(d) The due diligence assessment referred to in sub-paragraph (c) above must cover:

(i) the governance and ownership structure of the prospective Direct Electronic Access client;

(ii) the types of strategies to be undertaken by the prospective Direct Electronic Access client;

(iii) the operational set-up, the systems, the pre-trade and post-trade controls and the real-time monitoring of the prospective Direct Electronic Access client;

(iv) the responsibilities within the prospective Direct Electronic Access client for dealing with actions and errors;

(v) the historical trading pattern and behaviour of the prospective Direct Electronic Access client;

(vi) the level of expected trading and order volume of the prospective Direct Electronic Access client;

(vii) the ability of the prospective Direct Electronic Access client to meet its financial obligations to the Direct Electronic Access provider; and

(viii) the disciplinary history of the prospective Direct Electronic Access client, where available.

(e) A Member offering Direct Electronic Access allowing clients to use third-party trading software for accessing trading venues must ensure that the software includes pre-trade controls.

The requirements in AMI 2.7 do not apply to an Authorised Crowdfunding Platform.

2.8. Financial Crime and Market Abuse

2.8.1. Financial Crime

Financial Crime means any kind of conduct relating to money or to financial services or markets that would amount to criminal conduct under law of Republic of Kazakhstan (whether or not such conduct takes place in the Republic of Kazakhstan), including any offence involving:

(a) fraud or dishonesty;

(b) misconduct in, or misuse of information relating to, a financial market;

(c) handling the proceeds of crime; or

(d) the financing of terrorism.

2.8.2. Measures to prevent, detect and report market abuse or Financial Crime

An Authorised Market Institution must:

(a) ensure that appropriate measures (including the monitoring of transactions effected on or through the Authorised Market Institution's facilities) are adopted to reduce the extent to which the Authorised Market Institution's facilities can be used for a purpose connected with Market Abuse, Financial Crime or money laundering, and to facilitate their detection and monitor their incidence; and

(b) immediately report to the AFSA any suspected Market Abuse, Financial Crime or money laundering, along with full details of that information in writing.

2.8.3. Whistleblowing

An Authorised Market Institution must have appropriate procedures and protections for requiring its Employees to disclose any information to the AFSA in a manner which does not expose them to any disadvantage as a result of so doing.

2.9. Safeguarding and administration of assets

2.9.1. Safeguarding and administration of users' assets

(1) An Authorised Market Institution must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, including Members and other participants, satisfactory arrangements are made for that purpose with an appropriate custodian or settlement facility and clear terms are agreed between the users of the facility and the Authorised Market Institution.

(2) When assessing its systems and controls for the safeguarding and administration of assets belonging to users of its facilities, an Authorised Market Institution must have regard to the totality of the arrangements and processes by which it records:

(a) the assets held and the identity of the legal and beneficial owners of the relevant assets, and where appropriate, any Persons who have charges over, or other interests in, those assets; and

(b) any additions, reductions and transfers in each individual account of assets.

(3) When determining whether it has made satisfactory arrangements for the safeguarding and administration of assets belonging to the users of its facilities, an Authorised Market Institution should have regard to:

(a) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;

(b) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the Authorised Market Institution undertook to safeguard and administer those assets;

(c) whether the arrangements ensure that the assets are not transferred to the Authorised Market Institution or to any other Person to settle the debts of the owner (or other Person with the appropriate rights over the assets) except in accordance with valid instructions from a Person entitled to give those instructions, or in accordance with the terms of the agreement by which the Recognised Body undertook to safeguard and administer those assets;

(d) whether the arrangements include satisfactory procedures to ensure that any rights arising in relation to the assets held as a result of any actions by the issuers of those assets (or other relevant Persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the Recognised Body undertook to safeguard and administer those assets;

(e) whether there are adequate arrangements to ensure the proper segregation of assets belonging to the Authorised Market Institution (or to Undertakings in the same Group) from those belonging to the users of its facilities for the safeguarding and administration of assets;

(f) whether its arrangements include satisfactory procedures for the selection, oversight and review of custodians or sub-custodians used to hold the assets;

(g) whether the agreements by which the Authorised Market Institution undertakes to safeguard and administer assets belonging to users of its facilities include appropriate information regarding the terms and conditions of that service and the obligations of the Authorised Market Institution to the user of the service and of the user of the service to the Authorised Market Institution;

(h) whether the records kept of those assets and the operation of the safeguarding services provide sufficient accurate and timely information to:

(i) identify the legal and beneficial owners of the assets and of any Persons who have charges over, or other interests in, the assets;

(ii) record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and

(iii) identify separately the assets owned by (or, where appropriate, on behalf of) different Persons, including, where appropriate, the assets owned by Members of the Authorised Market Institution and their Clients;

(i) the frequency of reconciliation of the assets held by (or on behalf of) the Authorised Market Institution with the accounts held with the Authorised Market Institution by

the users of its safeguarding and administration services and the extent of the arrangements for resolving a shortfall identified in any reconciliation; and

(j) the frequency with which statements of their holdings are provided to the users of the safeguarding and administration services, to the owners of the assets held and to other appropriate Persons in accordance with the terms of the agreement by which the Authorised Market Institution undertook to safeguard and administer those assets.

2.9.2. Custody and investment risk

(1) An Authorised Market Institution must have effective means to address risks relating to:

(a) custody of its own assets, in accordance with (2), if it is an Authorised Clearing House; or

(b) investments, in accordance with (3), if it is an Authorised Investment Exchange.

(c) ***[intentionally omitted]***

(2) For the purposes of (1)(a), an Authorised Clearing House must:

(a) hold its own assets with entities which are licensed for holding deposits or providing custody, as judged appropriate by the AFSA or a Financial Services Regulator acceptable to the AFSA;

(b) be able to have prompt access to its assets when required; and

(c) regularly evaluate and understand its exposures to entities which hold its assets.

(3) For the purposes of (1)(b), an Authorised Investment Exchange must ensure that:

(a) it has an investment strategy which is consistent with its overall risk-management strategy and is fully disclosed to its Members and other participants using its facilities;

(b) its investments comprise instruments with minimal credit, market, and liquidity risks; and

(c) its investments are secured by, or represent claims on, high-quality obligors, allowing for quick liquidation with little, if any, adverse price effect.

2.10. Transaction recording

An Authorised Market Institution must ensure that satisfactory arrangements are made for recording transactions effected on its facilities, cleared or settled (or to be cleared or settled) by the Authorised Market Institution by means of its facilities.

Guidance

When determining whether it has satisfactory arrangements for recording the transactions effected on, cleared or settled, or to be cleared or settled, by means of, its facilities, an Authorised Market Institution should have regard to:

(a) its arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least 6 years; and

(b) the type of information recorded and the extent to which the record includes details for each transaction of:

(i) the name of the Investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;

(ii) the identities and, where appropriate, the roles of the counterparties to the transaction;

(iii) if its rules make provision for transactions to be effected, cleared, settled or to be cleared or settled in more than one type of facility, or under more than one part of its rules, the type of facility in which, or the part of its rules under which, the transaction was effected, cleared, settled or to be cleared or settled;

(iv) the date and manner of settlement of the transaction; and

(v) communication regarding transactions executed on the Authorised Market Institution's facilities should be carried out using official communication channels of the Authorised Market Institution.

2.11. Complaints handling

An Authorised Market Institution must:

(a) have effective arrangements in place for the investigation and resolution of complaints made against it;

(b) establish and maintain a register of complaints made against it and their resolution; and

(c) keep records of the complaints for a minimum of six years.

Guidance

Procedures should be in place to acknowledge a complaint promptly, for making an objective consideration of the complaint and for a timely response to be sent to the complainant.

2.12. Trade Repository

(1) The activity of maintaining a Trade Repository may be carried on by an Authorised Market Institution.

(2) In (1), a Trade Repository is a centralised registry that maintains an electronic database containing records of transactions in Derivatives including over-the-counter Derivatives.

(3) An Authorised Market Institution maintaining a Trade Repository is subject to some specific requirements relating to that activity, which are set out in Schedule 2.

(4) Counterparties and Authorised Clearing Houses must ensure that the details of any Derivative contract they have concluded and any modification or termination of the contract are reported to a Trade Repository. The details must be reported no later than the business day following the conclusion, modification or termination of the contract.

(5) Where a Trade Repository is not available to record the details of an over-the-counter Derivative contract, counterparties and Authorised Clearing Houses must ensure that such details are reported to the AFSA.

Guidance

(1) Maintaining a Trade Repository is not a separately Regulated or Market Activity, but may be carried on by an Authorised Market Institution.

(2) The functions of a Trade Repository promote increased transparency and integrity of information, particularly for over-the-counter Derivatives.

2-1. RULES APPLICABLE TO AUTHORISED MARKET INSTITUTIONS OPERATING A FACILITY FOR SECURITY TOKENS

Guidance

Operating a facility for Security Tokens is defined in GLO as Operating an Exchange or Operating a Clearing House on which Security Tokens are traded, cleared, or both traded and cleared.

2-1.1. Technology and governance requirements

2-1.1.1. Without limiting the generality of the technology resources requirements in AMI 2.4, an Authorised Market Institution must:

(a) establish and maintain policies and procedures to ensure that any DLT application used in connection with the facility operates on the basis of 'permissioned' access, such that it allows the operator to have and maintain adequate control over the Persons who are permitted to access and update records held on that DLT application;

(b) establish and maintain adequate measures to ensure that the DLT application it uses, and the associated rules and protocols, contain:

(i) clear criteria governing Persons who are permitted to access and update records for the purposes of trading or clearing Security Tokens on the facility, including criteria about the integrity, credentials and competencies appropriate to the roles played by such persons;

(ii) measures to address risks, including to network security and network compatibility, that may arise through systems used by Persons permitted to update the records on the DLT application;

(ii) processes to ensure that the Authorised Market Institutions undertakes sufficient due diligence and adequate monitoring of ongoing compliance, relating to the matters referred to in (i) and (ii); and

(iv) measures to ensure there are appropriate restrictions on the transferability of Security Tokens in order to address AML and CFT risks;

(c) ensure any DLT application used for its facility is fit for purpose; and

(d) have regard to industry best practices in developing its technology design and technology governance relating to DLT that is used by the facility.

Guidance

(1) To be fit for purpose, the technology design of the DLT application used by an Authorised Market Institution Operating a facility for Security Tokens should be able to address how

the rights and obligations relating to the Security Tokens traded on that facility are properly managed and capable of being exercised or performed. For example, where a Security Token confers rights and obligations substantially similar to those conferred by a Share in a company, the DLT application would generally need to enable the management and exercise of the shareholder's rights. These may, for example, include the right to receive notice of, and vote in, shareholder meetings, receive any declared dividends and participate in the assets of the company in a winding up.

(2) To ensure the technology governance of any DLT application used on its facility is fit for purpose, an Authorised Market Institution should, as a minimum, have regard to the following:

(a) careful maintenance and development of the relevant systems and architecture in terms of its code version control, implementation of updates, issue resolution, and regular internal and third party testing;

(b) security measures and procedures for the safe storage and transmission of data in accordance with agreed protocols;

(c) procedures to address changes in the protocol which result in modifications of or the splitting of the underlying distributed ledger into two or more separate ledgers (often referred to as a 'forks'), whether or not the new protocol is backwards compatible with the previous version;

(d) procedures to deal with system outages, whether planned or not, and errors;

(e) decision-making protocols and accountability for decisions;

(f) procedures for establishing and managing interfaces with Digital wallet Service Providers; and

(g) whether the protocols, smart contracts and other inbuilt features of the DLT application meet at least a minimum acceptable level of reliability and safety requirements, including to deal with a cyber or hacking attack, and how any resulting disruptions would be resolved.

(3) Credentials which indicate a Person is suitable to update records for the purposes of trading or clearing Security Tokens on the facility may include:

(a) accreditation by a recognised and reputable body to certify the requisite knowledge required; or

(b) accreditation by the relevant body to certify compliance with the Kazakhstani standards in the area.

2-1.2. Operating a facility for Security Tokens that permits direct access

2-1.2.1. An Authorised Market Institution must ensure that:

(1) it treats each Direct Access Member as its Client;

(2) its Business Rules clearly set out:

(a) the duties owed by the Authorised Market Institution to the Direct Access Member and how the Authorised Market Institution is held accountable for any failure to fulfil those duties; and

(b) the duties owed by the Direct Access Member to the Authorised Market Institution and how the Direct Access Member is held accountable for any failure to fulfil those duties,

(3) appropriate investor redress mechanisms are available, and disclosed, to each Member permitted to trade or clear Security Tokens on its facility; and

(4) its facility contains a prominent disclosure of the risks associated with the use of DLT for trading and clearing Investments, particularly those relating to Digital wallets and the susceptibility of private cryptographic keys to misappropriation.

2-1.2.2. (1) Without limiting the generality of the systems and controls obligations of the Authorised Market Institution, an Authorised Market Institution must have in place adequate systems and controls to address market integrity, AML, CFT and investor protection risks in permitting a Direct Access Member to access its facility, including procedures to:

(a) identify the ultimate beneficial owner of a Direct Access Member, where the Member is a Body Corporate;

(b) ensure that appropriate due diligence sufficient to address AML and CFT risks has been conducted on each Direct Access Member, before permitting that Member to access its facility;

(c) detect and address market manipulation and abuse; and

(d) ensure that there is adequate disclosure relating to the Security Tokens that are traded on the facility, through prospectus and ongoing disclosure under chapters 1 and 6 of MAR.

(2) An Authorised Market Institution must have adequate controls and procedures to ensure that trading in Security Tokens by Direct Access Members does not pose any risks to the orderly and efficient functioning of the facility's trading system, including controls and procedures to:

(a) mitigate counterparty risks that may arise from defaults by Direct Access Members, through adequate collateral management measures, such as margin requirements, based on the settlement cycle adopted by the Authorised Market Institution;

(b) identify and distinguish orders that are placed by Direct Access Members, and, if necessary, enable the Authorised Market Institution to stop orders of, or trading by, such Direct Access Members;

(c) prevent Direct Access Members from allowing any other Persons to access the facility through that Direct Access Member's access; and

(d) ensure that Direct Access Members fully comply with the Business Rules of the facility and promptly address any gaps and deficiencies that are identified.

(3) An Authorised Market Institution must have adequate resources and mechanisms to carry out front-line monitoring of the trading activities of Direct Access Members and must be able to deal with any threats to market integrity appropriately.

(4) An Authorised Market Institution must ensure that, to the extent that any of the systems and controls referred to in (1) are embedded within, or otherwise facilitated through, DLT, they must be included within the scope of the annual audit and written report required under AMI 2-1.5.

2-1.2.3. When an Authorised Market Institution Executes a Transaction in Security Tokens for a Direct Access Member, the Authorised Market Institution must comply with the requirements relating to confirmation notes that would apply to an Authorised Firm under COB 9.1.2, 9.1.3 and 9.1.5.

2-1.3. Safe custody of Security Tokens

2-1.3.1. Without limiting the generality of AMI 2.9, where an Authorised Market Institution's obligations include making provision for the safeguarding and administration of Security Tokens belonging to Members and other participants on its facility, it must ensure that:

(1) where its safe custody arrangements involve acting as a Digital wallet Service Provider, it complies with the Client Asset provisions in COB 8.2 and 8.3 and the following requirements for firms Providing Custody of Security Tokens:

(a) A Digital wallet Service Provider must ensure that:

(i) any DLT applications it uses in Providing Custody of Security Tokens are resilient, reliable and compatible with any relevant facility on which those Security Tokens are traded or cleared;

(ii) it has the ability to clearly identify and segregate Security Tokens belonging to different Clients; and

(iii) it has in place appropriate procedures to enable it to confirm Client instructions and transactions, maintain appropriate records and data relating to those instructions and transactions and to conduct a reconciliation of those transactions at appropriate intervals.

(b) A Digital wallet Service Provider, in developing and using DLT applications and other technology to Provide Custody of Security Tokens, must ensure that:

(i) the architecture of any Digital wallets used adequately addresses compatibility issues and associated risks;

(ii) the technology used and its associated procedures have adequate security measures (including cyber security) to enable the safe storage and transmission of data relating to the Security Tokens;

(iii) the security and integrity of cryptographic keys are maintained through the use of that technology, taking into account the password protection and methods of encryption used;

(iv) there are adequate measures to address any risks specific to the methods of usage and storage of cryptographic keys (or their equivalent) available under the DLT application used; and

(v) the technology is compatible with the procedures and protocols built into the Operating Rules or equivalent on any facility on which the Security Tokens are traded or cleared or both traded and cleared.

(2) where it appoints a third party Digital wallet Service Provider to Provide Custody for Security Tokens traded or cleared on its facility, that Person is either:

(a) an Authorised Firm permitted to be a Digital wallet Service Provider; or

(b) a firm that is regulated by a Financial Services Regulator to an equivalent level as that provided for under the AFSA regime for Digital wallet Service Providers.

2-1.4. Technology audit reports

2-1.4.1. An Authorised Market Institution must:

(a) appoint a suitably qualified and independent third party professional to:

(i) carry out an annual audit of the Authorised Market Institution'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 (i) have been met and lists any recommendations or areas of concern;

(b) submit to the AFSA a copy of the report referred to in (a)(ii) within 4 months of the Authorised Market Institution's financial year end; and

(c) be able to satisfy the AFSA that the independent third party professional who undertakes the annual audit has the relevant expertise to do so, including by reference to the due diligence undertaken by the Authorised Market Institution to satisfy itself of that fact.

Guidance

Where an Authorised Market Institution appoints a third party professional for the purposes of (a)(i) and (ii), the Authorised Market Institution is expected to ensure that the professional is suitably qualified.

Credentials which indicate a qualified and independent third party professional is suitable to conduct audits of technology governance may include:

(1) designation as a Certified Information Systems Auditor (CISA) or Certified Information Security Manager (CISM) by the Information Systems Audit and Control Association (ISACA); or

(2) designation as a Certified Information Systems Security Professional (CISSP) by the International Information System Security Certification Consortium (ISC); or

(3) accreditation by a recognised and reputable body to certify compliance with relevant ISO/IEC 27000 series standards; or

(4) accreditation by the relevant body to certify compliance with the Kazakhstani standards in the area of information (cyber) security.

3. RULES APPLICABLE TO AUTHORISED INVESTMENT EXCHANGES

3.1. Systems and Controls

3.1.1. Fair and orderly trading

An Authorised Investment Exchange must ensure that it has transparent rules and procedures to provide for fair and orderly trading and to establish objective criteria for the efficient execution of orders.

3.1.1-1. Price and position limits in respect of Commodity Derivatives

An Authorised Investment Exchange must ensure that the risks to fair and orderly trading, arising from sharp price movements, are mitigated for Commodity Derivatives.

3.1.1-2. Price Limits

An Authorised Investment Exchange may impose price limits in relation to a Commodity Derivative to mitigate the risks to fair and orderly trading arising from sharp movements in the price of the Commodity Derivative.

3.1.1-3. Position Limits

An Authorised Investment Exchange must, in respect of a Commodity Derivative, implement position limits for the purposes of mitigating the risk of Market Abuse.

Guidance

An Authorised Investment Exchange should:

(a) consider the impact on its Commodity Derivative market from changes in the underlying market and set its position limits accordingly;

(b) ensure that its position limits are not exceeded by any Member, its affiliates or other participant trading in the Derivative, including through the acquisition of additional positions;

(c) require that its Members and other participants report their positions on a regular basis and on the occurrence of certain relevant events;

(d) include provisions in its Business Rules which impose appropriate obligations on Members and other participants, to ensure their compliance with its position limit obligations;

(e) immediately notify the AFSA when a position limit threshold is exceeded, detailing:

(i) the reason why such a large position is being held;

(ii) how the holding of the position furthers the participant's or Member's trading strategy; and

(iii) whether the position is being used for hedging and the relevant contracts being hedged against;

(f) on request by the AFSA, immediately make available the information collected by the Authorised Investment Exchange for the purposes of monitoring and enforcing the position limit obligations of its Members and other participants; and

(g) have in place appropriate internal governance arrangements to ensure its position limits are effective in mitigating relevant risks, including the risks relating to Market Abuse.

3.1.2. Execution of orders

An Authorised Investment Exchange must have non-discretionary rules for the execution of orders.

3.1.3. Publicly available data on quality of executions

An Authorised Investment Exchange must make available to the public, without any charges, data relating to the quality of execution of transactions on the Authorised Investment Exchange on at least an annual basis. Reports must include details about price, costs, speed and likelihood of execution for individual Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments.

3.1.4. Market making arrangements

An Authorised Investment Exchange must:

(a) have written agreements with all Members pursuing a Market Making Strategy by using its facilities (Market Making Agreements); and

(b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of Members enter into Market Making Agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis; and

(c) monitor and enforce compliance with the Market Making Agreements;

(d) inform the AFSA of the content of its Market Making Agreements; and

(e) provide the AFSA with any information it requests which it reasonably requires to satisfy itself that the Market Making Agreements comply with sub-paragraph 3.1.4.

3.1.5. Trading controls

An Authorised Investment Exchange must be able to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or that are clearly erroneous;

(b) temporarily halt or constrain trading on its facilities if necessary or desirable to maintain an orderly market; and

(c) cancel, vary, or correct any order resulting from an erroneous order entry and/or the malfunctioning of the system of a Member or of the Authorised Investment Exchange

3.1.6. Tick size regimes

The Authorised Investment Exchange must adopt a tick size regime in respect of each type of Security, Unit in a Listed Fund, Commodity Derivatives, or Environmental Instruments traded on each trading venue operated by it. The tick size regime must:

(a) be calibrated to reflect the liquidity profile of such Investments in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and

(b) be able to adapt the tick size for each such Investment appropriately.

3.1.7. Short selling and position management

(a) An Authorised Investment Exchange must have in place effective systems, controls and procedures to monitor and manage:

(i) Short selling in shares, debentures and any other similar Investments; and

(ii) Risks arising from position concentrations.

(b) For the purposes of (a), an Authorised Investment Exchange must have adequate powers over its Members to mitigate the probability and impact of risk to the orderly functioning of its facilities arising from unsettled positions in Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments.

(c) Short selling for the purposes of this Rule constitutes the sale of a share, debenture or other similar Investments by a Person who does not own the share, debenture or other similar Investment at the point of entering into the contract to sell.

3.1.8. Liquidity incentive schemes

An Authorised Investment Exchange must not introduce a liquidity incentive scheme or any other scheme for encouraging bids on a trading venue or to increase the volume of business transacted unless it has obtained the AFSA's prior written approval for the scheme.

3.1.9. Settlement and Clearing facilitation services

An Authorised Investment Exchange must ensure that satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise), Clearing and settlement of the rights and liabilities of the parties to transactions effected on the Authorised Investment Exchange (being rights and liabilities in relation to those transactions).

3.2. Admission to trading

3.2.1. Admission to Trading Rules

An Authorised Investment Exchange must make clear and transparent rules concerning the admission of Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments to trading on its facilities.

3.2.2. Content of Admission to Trading Rules

The rules of the Authorised Investment Exchange must ensure that:

(a) Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments admitted to trading on an Authorised Investment Exchange's facilities are capable of being traded in a fair, orderly and efficient manner;

(b) Securities, Units in a Listed Fund, or Environmental Instruments admitted to trading on an Authorised Investment Exchange's facilities are freely negotiable; and

(c) In case of Commodity Derivatives:

(i) contracts for Commodity Derivatives admitted to trading on an Authorised Investment Exchange's facilities are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions; and

(ii) the rules and procedures must promote transparency by ensuring that there is sufficient information made available to the markets relating to the terms and conditions of the Derivative contracts traded on its facilities (including, where relevant, information relating to delivery and pricing of Derivative contracts).

Guidance: Fair, orderly and efficient trading

When assessing whether a Security, Unit in a Listed Fund, Commodity Derivative or Environmental Instrument is capable of being traded in a fair, orderly and efficient manner, the Authorised Investment Exchange shall take into account, depending on the nature of the Security, Unit in a Listed Fund, Commodity Derivative or Environmental Instrument being admitted, whether the following criteria are satisfied:

(a) the terms of the Security, Unit in a Listed Fund, Commodity Derivative or Environmental Instrument are clear and unambiguous and allow for a correlation between the price of the Security, Unit in a Listed Fund, Commodity Derivative or Environmental Instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available or ascertainable; and

(c) there is sufficient information publicly available or ascertainable of a kind needed to value the Security, Unit in a Listed Fund, Commodity Derivative or Environmental Instrument.

3.2.2-1. Commodity Derivative contract design specifications

(1) An Authorised Investment Exchange must ensure, where appropriate, that the Commodity Derivative contracts have terms and conditions which:

(a) promote price discovery of the underlying commodity;

(b) ensure, to the extent possible, that there is a correlation to the operation of the physical market in the underlying commodity;

(c) include contract delivery specifications which address matters specified in Schedule 1; and

(d) provide for legally enforceable settlement and delivery procedures.

(2) For the purposes of meeting the requirement in 3.2.2(c)(i), an Authorised Investment Exchange must include in its Business Rules contract design specifications relating to Derivative contracts traded on its facilities which, at a minimum, include:

(a) minimum price fluctuations (price ticks);

(b) maximum price fluctuations (daily price limits), if any;

(c) last trading day;

(d) settlement or delivery procedures as applicable;

(e) trading months;

(f) position limits, if any;

(g) reportable levels; and

(h) trading hours.

3.2.2-2. On-going review of Commodity Derivative contracts

An Authorised Investment Exchange must:

(a) establish and implement clear procedures relating to the development and review of contract design for Commodity Derivative contracts traded on its facilities;

(b) have adequate process through which the views of potential users of Commodity Derivative contracts can be taken into account when developing and reviewing contract design for Commodity Derivative contracts;

(c) have adequate powers which enable it to eliminate contractual terms which produce, or are likely to produce, manipulative or disorderly conditions in the markets generally, or in relation to the particular class or type of Commodity Derivative contracts; and

(d) have adequate mechanisms to monitor and evaluate whether the settlement procedures reflect the underlying physical market and promote reliable pricing relationship between the two markets.

Guidance

(1) When assessing whether an Authorised Investment Exchange's rules and procedures are adequate, the AFSA considers, among other things:

(a) the criteria adopted by the Authorised Investment Exchange for Commodity Derivative contracts to be traded on its facilities;

(b) what powers the Authorised Investment Exchange has in order to eliminate manipulative or disorderly conduct, including powers to vary, remove or rescind conditions of any Commodity Derivative contracts already traded where these are found to cause manipulative or disorderly conditions; and

(c) what mechanisms are established by the Authorised Investment Exchange to monitor and review market activities relating to Commodity Derivative contracts traded on its facilities.

(2) When designing and reviewing the design of Commodity Derivative contracts, an Authorised Investment Exchange should consider the following physical market characteristics, including differences within a commodity market with regard to the commodity in question:

(a) size and structure of the physical market;

(b) commodity characteristics (such as grade, quality, weight, class, growth, origin, source etc.);

(c) historical patterns of production, consumption and supply, including seasonality, growth, market concentration in the production chain, domestic or international export focus and logistics;

(d) extent of distribution or dispersal of production and consumption of the underlying physical commodity among producers, merchants and consumers;

(e) the liquidity of the underlying physical market;

(f) the spot market pricing system including transparency, availability, reliability and frequency of cash pricing;

(g) price volatility; and

(h) the existence of price controls, embargoes, export restrictions or other regulation or controls affecting the price or supply of the underlying physical commodity.

Guidance: Effective settlement conditions

When assessing whether a contract for a Commodity Derivative contains effective settlement conditions, the Authorised Investment Exchange should take into account, depending on the nature of the derivative being admitted, whether the following criteria are satisfied:

(a) the arrangements for determining the settlement price of the derivative ensure that this price properly reflects the price or other value measure of the relevant underlying Investment;

(b) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying Investment or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying Investment as well as adequate arrangements to obtain relevant information about that underlying Investment.

(c) appropriate supervisory arrangements are in place to monitor trading and settlement in such Commodity Derivative; and

(d) settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those Derivatives.

3.2.2-3. Use of Price Information Provider

(1) An Authorised Investment Exchange may admit to trading or trade on its facilities Investments the value of which is determined by reference to an underlying benchmark or index provided by a Price Information Provider where it has undertaken appropriate due diligence to ensure that the Price Information Provider, on an on-going basis, meets the requirements set out in (2).

(2) For the purposes of (1), the Price Information Provider must:

(a) have fair and non-discriminatory procedures for establishing prices of Investments which are made public;

(b) demonstrate adequate and appropriate transparency over the methodology, calculation and inputs to allow users to understand how the benchmark or index is derived and its potential limitations;

(c) where appropriate, give priority to concluded transactions in making assessments and adopt measures to minimise selective reporting;

(d) be of good standing and repute as an independent and objective price reporting agency or index provider;

(e) have a sound corporate governance framework;

(f) have adequate arrangements to avoid its staff having any conflicts of interest where such conflicts are, or are likely to have, a material adverse impact on price establishment process; and

(g) adequate complaint resolution mechanisms to resolve any complaints about the Price Information Provider's assessment process and methodology.

3.2.3. Undertaking to comply with AIFC rules

An Authorised Investment Exchange may not admit Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments to trading unless the Person who seeks to have such Investments admitted to trading:

(a) gives an enforceable undertaking to the AFSA to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution, including but not limited to requirements in MAR relating to Reporting Entities;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

Guidance

See Guidance to AMI 2.6.4

3.2.4. Review of compliance

The Authorised Investment Exchange must maintain arrangements regularly to review whether the Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments admitted to trading on its facilities comply with the Admission to Trading Rules.

3.2.5. Verification of compliance by issuers with Market Rules

The Authorised Investment Exchange must maintain effective arrangements to verify that issuers of Securities or Units in a Listed Fund admitted to trading on a regulated market operated by it comply with the Market Rules.

3.2.6. Arrangements for access to information

The Authorised Investment Exchange must maintain arrangements to assist users of a market operated by it to obtain access to information made public under the Market Rules.

3.3. Suspending or removing from trading

3.3.1. Power to suspend

The rules of an Authorised Investment Exchange must provide that the Authorised Investment Exchange has the power to suspend or remove from trading on its facilities any Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments which no longer comply with its rules.

3.3.2. Limitation on power to suspend or remove Securities or Units in a Listed Fund from trading

An Authorised Investment Exchange may not suspend or remove from trading on its facilities any Security, Unit in a Listed Fund, Commodity Derivative, or Environmental Instrument which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

3.3.3. Suspension or removal from trading of associated Derivatives

Where the Authorised Investment Exchange suspends or removes Investment from trading on its facilities, it must also suspend or remove from trading on its facilities any Derivative that relates to or is referenced to that Investment where that is required to support the objectives of the suspension or removal of trading of that Investment.

3.3.4. Publication of decision to suspend or remove from trading

Where the Authorised Investment Exchange suspends or removes any Security, Unit in a Listed Fund, Commodity Derivative, or Environmental Instrument from trading on its facilities, including any Derivative in accordance with AMI 3.3.3, it must immediately notify the AFSA and make that decision public.

3.3.5. Publication of decision to lift suspension or re-admit to trading

Where the Authorised Investment Exchange lifts a suspension or re-admits any Security, Unit in a Listed Fund, Commodity Derivative, or Environmental Instrument to trading on its facilities, including any Derivative suspended or removed from trading in accordance with AMI 3.3.3, following a decision made under AMI 3.3.1, it must notify the AFSA and make that decision public.

3.4. Transparency obligations

3.4.1. Pre-trade transparency obligation

An Authorised Investment Exchange must make available to the public on a continuous basis during normal trading hours the current bid and offer prices of Securities, Units in a Listed Fund, Commodity Derivative, or Environmental Instrument traded on its systems and the depth of trading interests at those prices.

Guidance

The disclosure required by 3.4.1 would depend on the type of trading system employed, including continuous auction order-book, quote-driven, periodic auction and hybrid trading systems. An Authorised Investment Exchange should discuss its proposals for compliance with this requirement with the AFSA. The AFSA may waive or modify the requirement in respect of certain types of order, transaction, trading system or types of Investment (including large orders and illiquid instruments) pursuant to Section 8 of the Framework Regulations.

3.4.2. Post-trade transparency obligation

An Authorised Investment Exchange must make available to the public in as close to real-time as technically possible the price, volume and time of the transactions executed in respect of Securities or Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments traded on its facilities.

Guidance

The AFSA may waive or modify the requirement in AMI 3.4.2 in respect of certain types of trade or types of Investment pursuant to Section 8 of the Framework Regulations.

In particular, subject to AMI 1.1.2 (outsourcing) and to obtaining the approval of the AFSA, an Authorised Investment Exchange may delegate its provision of post-trade information to a regulatory news service or similar third party entity.

3.5. Default management

3.5.1. Default Rules

An Authorised Investment Exchange must have legally enforceable Default Rules which, in the event of a Member or other participant on the facility of the Authorised Investment Exchange being or appearing to be unable to meet his obligations in respect of one or more Market Contracts:

(a) enable it to suspend or terminate such Membership (or other participation) and cooperate by sharing information with its Authorised Clearing House or Recognised Non-AIFC Clearing House, and

(b) enable action to be taken in respect of unsettled Market Contracts to which that Member or other participant is a party.

Guidance

The AIFC Insolvency Rules contain provisions which protect action taken by an Authorised Investment Exchange under its Default Rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

3.5.2. Public notice of suspended or terminated Membership

The Authorised Investment Exchange must immediately issue a public notice on its website in respect of any Member or other participant whose Membership (or other participation) is suspended or terminated in accordance with AMI 3.5.1.

3.5.3. Cooperation with office-holder

The Authorised Investment Exchange must cooperate, by the sharing of information and otherwise, with the AFSA, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a Member or other participant of the Authorised Investment Exchange or the default of an Authorised Clearing House or another Authorised Investment Exchange.

3.6. Listing Rules

3.6.1. General requirements relating to Listing Rules

(1) An Authorised Investment Exchange wishing to admit Securities or Units in a Listed Fund to its own Official List must:

(a) have Listing Rules which comply with the requirements of AMI 3.6.2; and

(b) ensure that its Listing Rules are approved by the AFSA.

(2) Any amendment to an Authorised Investment Exchange's Listing Rules must, prior to the amendment becoming effective, have been:

(a) made available for a reasonable period of time to the market for consultation; and

(b) approved by the AFSA.

(3) In urgent cases, the AFSA may, on written application by the Authorised Investment Exchange, dispense with the requirement in (2)(a).

3.6.2. Contents of Listing Rules

The Listing Rules of an Authorised Investment Exchange must include requirements relating to:

(a) procedures for admission of Securities or Units in a Listed Fund to its Official List, including:

(i) requirements to be met before such Investments may be granted admission to an Official List; and

(ii) agreements in connection with admitting such Investments to an Official List;

(b) procedures for suspension and delisting of Securities or Units in a Listed Fund from an Official List;

(c) the imposition on any Person of obligations to observe specific standards of conduct or to perform, or refrain from performing, specified acts, reasonably imposed in connection with the admission of Securities or Units in a Listed Fund to an Official List or continued admission of such Investments to an Official List;

(d) penalties or sanctions which may be imposed by the Authorised Investment Exchange for a breach of the Listing Rules;

(e) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the Listing Rules;

(f) actual or potential conflicts of interest that have arisen or might arise when a Person seeks to have Securities or Units in a Listed Fund admitted to an Official List; and

(g) such other matters as are necessary or desirable for the proper operation of the listing rule process and the market.

3.6.3. Publication of Listing Rules

(1) An Authorised Investment Exchange must publish, and make freely available, its Listing Rules.

(2) Where an Authorised Investment Exchange has made any amendments to its Listing Rules, it must have adequate procedures for notifying users of such amendments.

3.6.4. Compliance with Listing Rules

(1) An Authorised Investment Exchange which is permitted to maintain an Official List must ensure the function is properly and independently operated.

(2) An Authorised Investment Exchange must have procedures in place to ensure that:

(a) its Listing Rules are monitored and enforced; and

(b) complaints regarding Persons subject to the Listing Rules are investigated.

(3) An Authorised Investment Exchange must ensure that:

(a) where appropriate, disciplinary action can be carried out and financial and other types of penalties can be imposed on Persons subject to the Listing Rules; and

(b) adequate appeal procedures are in place.

3.6.5. Application for admission of Securities or Units in a Listed Fund to an Official List

(1) Applications for the admission of Securities or Units in a Listed Fund to an Official List must be made by the issuer of such Investments, or by a third party on behalf of and with the consent of the issuer of such Investments.

(2) An Authorised Investment Exchange must, before granting admission of any Securities or Units in a Listed Fund to an Official List maintained by it:

(a) be satisfied that the applicable requirements, including those in its Listing Rules, have been or will be fully complied with in respect of those Investments; and

(b) comply with the requirements relating to notification to the AFSA in (4) and (5).

(3) An Authorised Investment Exchange must notify an applicant in writing of its decision in relation to the application for admission of Securities or Units in a Listed Fund to its Official List.

(4) Subject to (5), an Authorised Investment Exchange must provide the AFSA with the following information in connection with an admission of Securities (other than (i) Exempt Securities or (ii) Equity Securities in connection with Pre-IPO Listings) or Units in a Listed Fund to its Official List:

(a) a copy of the listing application and supporting documents (if applicable) - at least 10 business days before the admission;

(b) a copy of the assessment of the listing application carried out by the Exchange together with a notice of its decision in relation to the listing application - at least 5 business days before the admission; and

(c) any information requested by the AFSA.

(4-1) Subject to (5), an Authorised Investment Exchange must provide the AFSA with the following information in connection with an admission of Exempt Securities to its Official List or Equity Securities to its Official List under the sub-heading "Pre-IPO Listings":

(a) a copy of the listing application and supporting documents (if applicable) - at least 5 business days before the admission;

(b) a copy of the assessment of the listing application carried out by the Exchange together with a notice of its decision in relation to the listing application - at least 2 business days before the admission; and

(c) any information requested by the AFSA.

(5) An Authorised Investment Exchange must immediately notify the AFSA of any decision to suspend, restore from suspension or de-list any Securities or Units in a Listed Fund from its Official List and the reasons for the decision.

3.6.6. Undertaking to comply with AIFC rules

An Authorised Investment Exchange may not admit Securities or Units in a Listed Fund to an Official List unless the issuer of such Investments:

(a) gives an enforceable undertaking to the AFSA to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution, including but not limited to requirements in MAR relating to Reporting Entities;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

Guidance

See Guidance to AMI 2.6.4

4. RULES APPLICABLE TO AUTHORISED CLEARING HOUSES

4.1. Admission of toclearing

4.1.1. Admission to clearing rules

(1) An Authorised Clearing House must have clear and objective criteria included in its rules according to which Investments can be cleared or settled on its facilities.

(2) In the case of a Commodity Derivative contract, an Authorised Cleaning House must have regard to:

(a) the degree of standardisation of the contractual terms and operational processes of the Commodity Derivative contract;

(b) the volume and liquidity of the Commodity Derivative contract; and

(c) the availability of fair, reliable and generally accepted pricing information in the Commodity Derivative contract.

4.2. Risk management

4.2.1. Risk management framework

(1) An Authorised Clearing House must have a comprehensive risk management framework (i.e. detailed policies, procedures and systems) capable of managing legal, credit, liquidity, operational and other risks to which it is exposed.

(2) The risk management framework in (1) must:

(a) encompass a regular review of material risks to which the Clearing House is exposed and the risks posed to other market participants resulting from its operations; and

(b) be subject to periodic review by its board as appropriate to ensure that it is effective and operating as intended.

4.2.2. Safeguards for investors

An Authorised Clearing House must ensure that:

(a) access to its facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;

(b) its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services (being rights and liabilities in relation to those transactions);

(c) satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities; and

(d) appropriate measures are adopted to reduce the extent to which the clearing house's facilities can be used for a purpose connected with market abuse or Financial Crime, and to facilitate their detection and monitor their incidence.

4.2.3. Loss allocation

An Authorised Clearing House must maintain effective arrangements (which may include rules) for ensuring that losses that:

(a) arise otherwise than as a result of a default of a Member of the Authorised Clearing House; and

(b) threaten the Authorised Clearing House's solvency;

are allocated with a view to ensuring that the Authorised Clearing House can continue to provide its activities.

4.3. Credit and liquidity risk management

4.3.1. Credit Risk

(1) An Authorised Clearing House must establish a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing and settlement processes.

(2) An Authorised Clearing House operating a payment system or Securities Settlement System must cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources.

(3) An Authorised Clearing House operating as a Central Counterparty must:

(a) cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources;

(b) perform stress tests, on a regular basis as appropriate to the nature, scale and complexity of its operations, using models containing standards and predetermined parameters and assumptions; and

(c) at least monthly (and more frequently if the Securities or Units in a Listed Fund cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increase significantly), carry out a comprehensive and thorough analysis of stress testing models, scenarios, and underlying parameters and assumptions used to ensure that they are appropriate for determining the required level of default protection in light of current and evolving market conditions; and

(d) at least annually, conduct an independent review and validation of its financial risk management models.

4.3.2. Collateral

(1) An Authorised Clearing House which requires collateral to manage its own, its Members' or other participants' credit risks arising in the course of or for the purposes of its payment, clearing, and settlement processes must:

(a) only accept collateral with low credit, liquidity, and market risks; and

(b) set and enforce appropriately conservative haircuts and concentration limits.

(2) An Authorised Clearing House must, for the purposes of meeting the requirement in (1), establish and implement a collateral management system that is well designed and operationally flexible. Such a system must, at a minimum:

(a) limit the assets it accepts as collateral to those with low credit, liquidity, and market risks;

(b) establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions;

(c) to reduce the need for procyclical adjustments, establish, to the extent practicable and prudent, stable and conservative haircuts that are calibrated to include periods of stressed market conditions;

(d) avoid concentrated holdings of certain assets where that would significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and

(e) mitigate, if it accepts cross-border collateral, the risks associated with such use. Such measures must ensure that the collateral can be used in a timely manner.

4.3.3. Margin

An Authorised Clearing House operating as a Central Counterparty must:

(a) have a margin system which establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(b) use a reliable source of timely price data for its margin system;

(c) have procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(d) adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

(e) mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures;

(f) ensure that it has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants;

(g) analyse and monitor its model performance and overall margin coverage by conducting rigorous daily back testing and at least monthly, and more frequent where appropriate, sensitivity analysis; and

(h) regularly review and validate its margin system.

4.3.4. Liquidity Risk

(1) An Authorised Clearing House must:

(a) have a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities;

(b) have effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity;

(c) regularly test the sufficiency of its liquid resources through rigorous stress testing; and

(d) establish explicit rules and procedures that enable the Authorised Clearing House to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants.

(2) An Authorised Clearing House operating a payment system or Securities Settlement System must maintain sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.

(3) An Authorised Clearing House operating as a Central Counterparty must maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the two largest aggregate payment obligations to the Authorised Clearing House in extreme but plausible market conditions.

4.4. Settlement

4.4.1. Settlement finality

(1) An Authorised Clearing House must have rules and procedures which clearly define:

(a) the point at which settlement is final according to the relevant governing law; and

(b) the point after which unsettled payments, transfer instructions, or other obligations may not be cancelled by a participant.

(2) An Authorised Clearing House must complete final settlement no later than the end of the value date.

(3) Notwithstanding (1) above, a settlement by an Authorised Clearing House is final, irrevocable and binding and may not under any circumstances be reversed or avoided after:

(a) an amount of money is credited to or debited from a depository account; or

(b) an Investment approved for admission to the depository is credited to or debited from a depository account.

(4) Notwithstanding (1) above, transfer instructions and settlement are legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer instructions were entered into a system before the moment of opening of such insolvency proceedings. Where, exceptionally, transfer instructions are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the Authorised Clearing House can prove that it was not aware, nor should have been aware, of the opening of such proceedings.

(5) For the purpose of (4), the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.

4.4.2. Money settlement

(1) Where practical, an Authorised Clearing House must conduct its money settlements in central bank money.

(2) Where a Clearing House conducts its money settlements using commercial bank money, it must:

(a) adopt appropriate measures to minimise and strictly control the credit and liquidity risk arising from such use;

(b) ensure that its legal agreements with any settlement banks, at a minimum:

(i) specify clearly when transfers on the books of individual settlement banks are expected to occur and when they are final; and

(ii) ensure that funds received are transferable as soon as possible, if not intra-day, at least before the end of the payments day to enable it and its Members and other participants on its facilities to manage their credit and liquidity risks.

4.4.3. Physical delivery

(1) An Authorised Clearing House must:

(a) have rules and procedures which clearly state its obligations with respect to the delivery of physical instruments or commodities; and

(b) identify, monitor, and manage the risks and costs associated with the storage and delivery of physical instruments or commodities.

(2) A Clearing House must have adequate arrangements, including service agreements, which enable it to meet its physical delivery obligations.

Guidance

1. Where an Authorised Clearing House matches participants that have delivery and receipt obligations, the Authorised Clearing House would not need to be involved with the physical storage and delivery process but it should monitor the participants' performance and to the extent practicable, ensure the participants have the necessary systems and resources to be able to fulfil their physical delivery obligations.

2. The legal obligations for delivery should be clearly expressed in the Clearing Rules, Default Rules, and any related agreements, including provisions to specify:

(a) whether the receiving participant should seek compensation from the Authorised Clearing House or the delivering participant in the event of a loss; and

(b) if the Authorised Clearing House holds margin on the matched participants, such margin would only be released when the Authorised Clearing House confirms that both participants have fulfilled their obligations.

4.5. Central securities depositories and exchange-of-value settlement systems

4.5.1. Central securities depositories

An Authorised Clearing House acting as a Central Securities Depository must:

(1) have appropriate rules, procedures, and controls, including robust accounting practices, to safeguard the rights of issuers and holders of Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments, prevent the unauthorised creation or deletion of Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments ,and conduct periodic and at least daily reconciliation of its records of assets it maintains;

(2) prohibit overdrafts and debit balances in accounts of Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments;

(3) maintain Securities, Units in a Listed Fund, Commodity Derivatives, or Environmental Instruments in an immobilised or dematerialised form for their transfer by book entry;

(4) protect assets against custody risk through appropriate rules and procedures consistent with its legal framework;

(5) ensure segregation between the Central Securities Depository's own assets and the securities of its participants and segregation among the securities of participants; and

(6) identify, measure, monitor, and manage its risks from other activities that it may perform.

4.5.2. Central security depository links

(1) A CSD must not establish any link with another CSD (CSD link) unless:

(a) it has:

(i) prior to establishing the CSD link, identified and assessed potential risks, for itself and its Members and other participants using its facilities, arising from establishing such a link;

(ii) adequate systems and controls to effectively monitor and manage, on an on-going basis, risks identified under (a) above; and

(iii) complied with the requirement in (2); and

(b) it is satisfied, on reasonable grounds, that the contractual arrangement establishing the CSD link:

(i) provides to the CSD and its Members and other participants using its facilities adequate protection relating to possible risks arising from using the other CSDs to which it is linked (linked CSDs);

(ii) in the case of a provisional transfer of securities between the CSD and linked CSDs, ensure intra-day finality by prohibiting the retransfer of securities before the first transfer of securities becomes final;

(iii) sets out the respective rights and obligations of the CSD and linked CSDs and their respective Members and other participants using their facilities; and

(iv) in the case of a linked CSD outside the AIFC, sets out clearly the applicable laws that govern each aspect of the CSD's and the linked CSD's operations.

(2) The CSD must be able to demonstrate to the AFSA, prior to the establishment of any CSD link, that:

(a) the link arrangement between the CSD and all linked CSDs, contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;

(b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;

(c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;

(d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs, and where such settlement is not practicable or feasible, reasons for non-DVP settlement are notified to the AFSA before the link is approved ; and

(e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:

(i) identical moments established for the entry of transfer orders into the system;

(ii) irrevocable transfer orders; and

(iii) finality of transfers of securities and cash.

4.5.3. Exchange-of-value settlement systems

An Authorised Clearing House operating an exchange-of-value settlement system must eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the Authorised Clearing House settles on a gross or net basis and when finality occurs.

4.6. Default management

4.6.1. Default rules in respect of Market Contracts

(1) An Authorised Clearing House must have Default Rules which, in the event of a Member of the Authorised Clearing House being or appearing to be unable to meet his obligations in respect of one or more Market Contracts, enable action to be taken to close out his position in relation to all unsettled Market Contracts to which he is a party.

(2) The rules may authorise the taking of the same or similar action where a Member appears to be likely to become unable to meet his obligations in respect of one or more Market Contracts.

(3) If an Authorised Clearing House has arrangements for transacting business with, or in relation to common Members of, another Authorised Market Institution, it must have Default Rules which enable action to be taken in respect of unsettled Market Contracts to which that Authorised Market Institution is a party in the event of the Authorised Market Institution being or appearing to be unable to meet its obligations in respect of one or more Market Contracts.

Guidance

The AIFC Insolvency Rules contain provisions which protect action taken by an Authorised Clearing House under its Default Rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

4.6.2. Content of Default Rules

The Default Rules of an Authorised Clearing House must clearly define and specify:

(a) circumstances which constitute a default, addressing both financial and operational default, and how the different types of default may be treated by the Authorised Clearing House;

(b) the method for identifying a default (including any automatic or discretionary default scenarios, and how the discretion is exercised in any discretionary default scenarios);

(c) potential changes to the normal settlement practices in a default scenario;

(d) the management of transactions at different stages of processing;

(e) the expected treatment of proprietary and client transactions and accounts;

(f) the probable sequencing of actions that the Authorised Clearing House may take;

(g) the roles, obligations and responsibilities of various parties, including the Authorised Clearing House, the defaulting Member and non-defaulting participants;

(h) how to address the defaulting Member's obligations to clients;

(i) how to address the allocation of any credit losses it may face as a result of any individual or combined default among its participants with respect to their obligations to the Authorised Clearing House and how stress events are dealt with; and

(j) any other mechanisms that may be activated to contain the impact of a default, including:

(i) a default contribution fund, whereby defaulting and non-defaulting Members or participants' pre-funded contributions to the default contribution fund are applied to cover the losses or shortfall arising on a default on the basis of a predetermined order of priority; and

(ii) a resolution regime of the defaulting participant, involving "porting"; or

(iii) transferring the open positions and margin related to client transactions to a non-defaulting participant, receiver, third party or bridge financial company; and

(k) for all remaining rights and liabilities of the defaulter under or in respect of unsettled Market Contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules, by offsetting all relevant rights, assets and liabilities on the relevant account; and

(l) for the certification by or on behalf of the Authorised Clearing House of the sum finally payable or, as the case may be, of the fact that no sum is payable, separately for each account of the defaulter; and

(m) the Authorised Clearing House's segregation and portability arrangements, including the method for determining the value at which client positions will be transferred; and

(n) provisions ensuring that losses that arise as a result of the default of a Member of the Authorised Clearing House or threaten the Authorised Clearing House's solvency are allocated with a view to ensuring that the Authorised Clearing House can continue to provide the services and carry on the activities specified in its recognition order.

4.6.3. Notification to other parties affected

An Authorised Clearing House must have adequate arrangements for ensuring that parties to unsettled Market Contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

4.6.4. Cooperation with other authorities

An Authorised Clearing House must cooperate, by the sharing of information and otherwise, with the AFSA and any other authority or body having responsibility for any matter arising out of or connected with the default of a Member of the Authorised Clearing House or the default of another Authorised Clearing House or an Authorised Investment Exchange.

4.6.5. Margin

(a) The rules of an Authorised Clearing House must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.

(b) This rule is without prejudice to the requirements of any rules relating to clients' money made by the AFSA.

(c) For the purposes of this rule, "client account of the defaulter" means an account held by the Authorised Clearing House in the name of the defaulter in which transactions effected by the defaulter have been recorded.

4.6.6. Segregation

(1) An Authorised Clearing House acting as a Central Counterparty must have systems and procedures to enable segregation and portability of positions of the customers of its Members and other participants on its facilities, and any collateral provided to it with respect to those positions.

(2) For the purposes of (1), an Authorised Clearing House's systems and controls must, at a minimum, provide for the following:

(a) the segregation and portability arrangements that effectively protect the positions and related collateral of the customers of the Members or other participants on its facilities from the default or insolvency of the relevant Member or other participants;

(b) if the Authorised Clearing House offers additional protection of the customer positions and related collateral against the concurrent default of both the relevant Member or other participants or other customers, the adoption of necessary measures to ensure that the additional protection offered is effective; and

(c) the use of account structures that enable the Authorised Clearing House to readily identify positions of the customers of the relevant Member or other participant, and to segregate their related collateral.

(3) An Authorised Clearing House acting as a Central Counterparty must make available to its Members and other participants using its facilities, its rules, policies and procedures relating to the segregation and portability of the positions and related collateral of the customers of its Members and other participants using its facilities.

5. SUPERVISION

5.1. Introduction

Guidance

The provisions of this chapter are additional to:

(a) the provisions of Chapter 6 of GEN (Supervision) to which an Authorised Market Institution is also subject as an Authorised Person; and

(b) the powers in respect of Authorised Market Institutions conferred upon the AFSA in the Framework Regulations.

5.2. Information and notifications

5.2.1. Information gathering on the AFSA's own initiative

(a) The AFSA or (as the case may be) its officers may, by notice in writing, require an Authorised Market Institution or any Person who is connected to the Authorised Market Institution to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require.

(b) A Person is connected with an Authorised Market Institution if he is or has at any relevant time been:

i. a member of the Authorised Market Institution's group;

ii. a Controller of the Authorised Market Institution;

iii. a member of the Governing Body of the Authorised Market Institution; or

iv. any other member of a partnership of which the Authorised Market Institution is a member.

5.2.2. Ongoing notification obligations

An Authorised Market Institution must deal with AFSA in an open and co-operative manner and keep the AFSA promptly informed of significant events or activities, wherever they are carried on, relating to the Authorised Market Institution, of which the AFSA would reasonably expect to be notified, including but not limited to, any matters that might impair the Authorised Market Institution's ability to discharge its regulatory functions.

5.2.3. Notification of significant breaches by the Authorised Market Institution or its Employees

An Authorised Market Institution must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach by the Authorised Market Institution or any of its Employees of a Rule or any other requirement imposed by the AFSA may have occurred or may be about to occur.

5.2.4. Notification of significant breaches of the Business Rules

An Authorised Market Institution must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach by any Person of its Business Rules may have occurred or may be about to occur.

5.2.5. Notification of changes in constitution and governance

An Authorised Market Institution must give notice to the AFSA in the following circumstances, setting out written particulars of the matters concerned and any relevant dates:

(a) Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association or other document relating to its constitution, to:

i. its shareholders or any group or class of them;

ii. Persons granted access to its facilities or any group or class of them; or

iii. any other group or class of Persons which has the power to make that amendment or whole consent or approval is required before it may be made.

(b) Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution.

(c) Where any significant change is made to an agreement which relates to the constitution or to the corporate governance framework or the remuneration structure or strategy of the Authorised Market Institution.

5.2.6. Notification of complaints

Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform, any of its regulatory functions, and the conclusion is that the Authorised Market Institution should:

(a) make a compensatory payment to any Person; or

(b) remedy the matter which was the subject of that complaint,

the Authorised Market Institution must immediately notify the AFSA of that event and give the AFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

5.2.7. Notification of admission to or removal from trading

Where an Authorised Investment Exchange proposes to suspend or remove from trading or admit to trading, by means of its facilities, a class of Security, Unit in a Listed Fund, Commodity Derivative, or Environmental Instrument which it has not previously traded, but is licensed to do so, it must immediately give the AFSA notice of that event, at the same time as the proposal is communicated to Persons granted access to its facilities or shareholders, with the following information:

(a) a description of the Investment to which the proposal relates; and

(b) the name of any clearing or settlement facility in respect of that Investment.

5.2.8. Notification of removal from or admission to clearing

Where an Authorised Clearing House proposes to cease clearing or settling, or to commence clearing or settling, by means of its facilities, a class of Security, Unit in a Listed Fund, Commodity Derivative, or Environmental Instrument which it has not previously cleared or settled, but is licensed to do so, it must give the AFSA notice of that event, at the same time as

the proposal is communicated to Persons granted access to its facilities or shareholders, with the following information:

(a) a description of the Investment to which the proposal relates; and

(b) the name of any trading facility in respect of that Investment.

5.3. Financial and other information

5.3.1. Annual financial statements

An Authorised Market Institution must give the AFSA:

(a) a copy of its audited annual financial statements; and

(b) a copy of any audited consolidated annual financial statements of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

(c) four months after the end of the financial year to which the document relates;

(d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or

(e) the time when the document is sent to a holding company of the Authorised Market Institution.

5.3.2. Audit committee reports

Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any regulatory functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the AFSA a copy of that report.

5.3.3. Quarterly management accounts

An Authorised Market Institution must give the AFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

5.3.4. Forward-looking estimates

An Authorised Market Institution must give the AFSA:

(a) a statement of its anticipated income, expenditure and cash flow for each financial year; and

(b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

at least 15 days before the beginning of that financial year.

5.3.5. Fees and charges

An Authorised Market Institution must give the AFSA a summary of:

(a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and

(b) any such change, no later than the date when it is published and notified to relevant parties.

6. ***[intentionally omitted]***

6.1. ***[intentionally omitted]***

6.2. ***[intentionally omitted]***

6.3. ***[intentionally omitted]***

6.4. ***[intentionally omitted]***

6.5. ***[intentionally omitted]***

6.6. ***[intentionally omitted]***

7. RULES APPLICABLE TO AN AUTHORISED CROWDFUNDING PLATFORM

7.1. Application

7.1.1 The terminology used in this Chapter 7 varies according to the type of_Authorised Crowdfunding Platform:

(a) "Borrower", “Debenture”, "lender", "loan" and "Permitted Loan" for Loan Crowdfunding Platform; and

(b) "Issuer", "Investor", "Investment" and "Permitted Investment" for Investment Crowdfunding Platform.

7.1.2 AMI 7.2 and 7.3 apply to all Authorised Crowdfunding Platforms (unless specified otherwise).

7.2. Permissible activities

7.2.1 An Authorised Crowdfunding Platform may apply to the AFSA to carry on one or more of the following Regulated and Market Activities:

(a) Dealing in Investments as Agent;

(b) Arranging Custody;

(c) Arranging Deals in Investments;

(d) Operating a Representative Office;

(e) Providing Credit;

(f) Arranging a Credit Facility;

(g) Providing Money Services; and

(h) Operating a Digital Asset Trading Facility.

7.2.2 Permitted Investments and Permitted Loans

(1) An Investment Crowdfunding Platform may facilitate a Person investing in the following kinds of Investments ("**Permitted Investments**") through the Investment Crowdfunding Platform:

(a) Shares; and

(b) Units.

(2) A Loan Crowdfunding Platform may facilitate a Person investing in the following kinds of loans ("**Permitted Loans**") through the Loan Crowdfunding Platform:

(a) loans;

(b) Debentures; and

(c) other financial accommodation.

7.2.3 An Investment Crowdfunding Platform must not facilitate a Person investing in the following kinds of Investments through the Investment Crowdfunding Platform:

(a) Warrants;

(b) Certificates;

(c) Structured Products;

(d) Derivatives;

(e) Digital Assets; or

(f) rights or interests in a Security, Structured Product, Derivative or a Digital Asset.

7.3. Requirements for Authorised Crowdfunding Platforms

7.3.1 Clients of an Authorised Crowdfunding Platform

(1) Both Borrowers and lenders (in the case of a Loan Crowdfunding Platform) and Issuers and Investors (in the case of an Investment Crowdfunding Platform) will be Clients of an Authorised Crowdfunding Platform.

(2) An Authorised Crowdfunding Platform must classify Clients as being in one of the following categories:

(a) a Retail Lender or Retail Investor; or

(b) an Accredited Lender or Accredited Investor.

(3) An Authorised Crowdfunding Platform must notify a new Client of its classification in accordance with AMI 7.3.1 in respect of the services provided by it to that Client.

(4) An Authorised Crowdfunding Platform must classify as a Retail Lender or Retail Investor any Client that is not an Accredited Lender or Accredited Investor.

(5) For the purposes of AMI 7, “Accredited Lender or Accredited Investor” means:

(a) in respect of a Loan Crowdfunding Platform, any natural person who lends or intends to lend for a total consideration of at least USD100,000 (or an equivalent amount in another currency) per Borrower across one or more Permitted Loans in any 12-month period; or

(b) in respect of an Investment Crowdfunding Platform, any natural person who acquires or intends to acquire Permitted Investments for a total consideration of at least USD 100,000 (or an equivalent amount in another currency) per Issuer across one or more offers in any 12-month period; or

(c) an Authorised Person; or

(d) a Body Corporate.

7.3.2 Crowdfunding risk disclosure

(1) An Authorised Crowdfunding Platform must disclose prominently on its website the main risks to lenders or Investors using a Crowdfunding Platform, including (as applicable) that:

(a) Borrowers or Issuers using the Authorised Crowdfunding Platform may include new businesses and, as many new businesses fail, a loan to such a Borrower or an Investment with such an Issuer may involve high risks, including the loss of all or part of the lender or Investor's money, or delays in payment or the realization of gains;

(b) Borrowers or Issuers on the Crowdfunding Platform may apply funds borrowed to higher risk activities or investments (for example, to a prospective investments in a property development) and, consequently, a loan to such a Borrower or a Permitted Investment with such an Issuer may involve high risks;

(c) failure to diversify a portfolio of Permitted Loans or Permitted Investments may lead to greater losses in the event of the default of a relevant Borrower or Issuer;

(d) the lender may not be able to transfer their Permitted Loans or the Investor may not be able to sell their Permitted Investment when they wish to, or at all; and

(e) if for any reason the Authorised Crowdfunding Platform ceases to carry on its business, the lender or Investor may lose their money, incur costs or experience delays in being paid.

(2) The disclosure referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.3 Information about default or failure rates

(1) An Authorised Crowdfunding Platform must disclose prominently on its website (as applicable):

(a) for a Loan Crowdfunding Platform, the actual and expected default rates for Permitted Loans entered into on the Authorised Crowdfunding Platform; and

(b) for an Investment Crowdfunding Platform, the actual and expected failure rate of Permitted Investments who use the Authorised Crowdfunding Platform.

(2) The information referred to in (1) must:

(a) for actual default or failure rates, cover the period since the Authorised Crowdfunding Platform began providing the service;

(b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected rates; and

(c) be presented in a way that is fair, clear and not misleading.

(3) Where an Authorised Crowdfunding Platform is within its first 12 months of operation, it does not need to disclose actual default or failure rates if no such data is yet available. Where no such data is available during this period, an Authorised Crowdfunding Platform shall disclose that no historic data is available and all default or failure rates disclosed are expected default or failure rates only.

7.3.4 Information about the service and lender or Investor education tools

(1) An Authorised Crowdfunding Platform must disclose prominently on its website in a way that is fair, clear and not misleading key information about how its service operates (as applicable), including:

(a) details of how the Authorised Crowdfunding Platform functions;

(b) details of how and by whom an Authorised Crowdfunding Platform is remunerated for the service it provides, including fees and charges it imposes;

(c) any financial interest of an Authorised Crowdfunding Platform or a Related Person that may create a conflict of interest;

(d) the eligibility criteria for Borrowers or Issuers that use the service;

(e) the minimum and maximum amounts, if any, of Permitted Loans or Permitted Investments that may be sought by a Borrower or an Issuer using the service;

(f) what, if any, security or collateral is usually sought from Borrowers or Issuers, when might rights to enforce such security or apply such collateral be exercised and any limitations in connection therewith;

(g) the eligibility criteria for lenders or Investors that use the service;

(h) any limits on the amounts a lender may lend or an Investor may invest using the service, including limits for individual Permitted Loans or Permitted Investments and limits that apply over any 12-month period;

(i) when a lender or Investor may withdraw a commitment to provide funding, and the procedure for exercising such a right;

(j) what will happen if Permitted Loans sought by a Borrower or funds sought by an Issuer either fail to meet, or exceed, the target level;

(k) steps an Authorised Crowdfunding Platform will take if there is a material change in a Borrower's or Issuer's circumstances and the rights of the lender and Borrower or Issuer and Investor in that situation;

(l) how an Authorised Crowdfunding Platform will deal with overdue payments or a default by a Borrower;

(m) which jurisdiction's laws will govern the loan agreement between the lender and Borrower or the Investment between Investor and Issuer;

(n) arrangements and safeguards for Client Assets held or controlled by an Authorised Crowdfunding Platform, including details of any legal arrangements (such as nominee companies) that may be used to hold Client Assets;

(o) any facility an Authorised Crowdfunding Platform provides to facilitate the transfer of Permitted Loans or sale of Permitted Investments, the conditions for using the facility and any risks relating to the use of that facility;

(p) measures the Authorised Crowdfunding Platform has in place to ensure the Crowdfunding Platform is not used for money-laundering or other unlawful activities;

(q) measures the Authorised Crowdfunding Platform has in place for the security of information technology systems and data protection; and

(r) contingency arrangements the Authorised Crowdfunding Platform has in place to ensure the orderly administration of Permitted Loans if it ceases to carry on business.

(2) For the purposes of (1), "significant influence" refers to the ability to participate in, direct, or otherwise control the operating decisions of an entity. The existence of significant influence may be evidence in one or more of the following ways:

(a) representation on the board of directors or equivalent governing body of the entity;

(b) participation in the policy or decision making process of the entity;

(c) material transactions between the entity and the person with influence;

(d) changes to managerial personnel directed by the person with influence; or

(e) the provision of otherwise sensitive information to the person with influence.

(3) An Authorised Crowdfunding Platform must make available on its website one or more interactive educational tools which are reasonably designed to promote lender understanding of the services offered by the Authorised Crowdfunding Platform, as further described in (1), and of the key risks of using these services, as further described in 7.3.2.

7.3.5 Risk acknowledgement form

(1) An Authorised Crowdfunding Platform must ensure that a Retail Lender or Retail Investor provides a signed risk acknowledgement form for each Permitted Loan or Permitted Investment (as applicable) that it makes using the platform.

(2) The risk acknowledgement form under (1) must:

(a) set out clearly the risks referred to in AMI 7.3.2, 7.3.4;

(b) require the Retail Lender or Retail Investor to confirm that they understand those risks; and

(c) be provided before, or at the same time as, the Retail Lender or Retail Investor commits to making the Permitted Loan or Permitted Investment (as applicable).

7.3.6 Due diligence on Borrowers or Issuers

(1) An Authorised Crowdfunding Platform must not permit a Borrower or Issuer to use its service unless the Borrower or Issuer is a Body Corporate.

(2) An Authorised Crowdfunding Platform must conduct due diligence on each Borrower or Issuer before allowing it to use its service.

(3) The due diligence under (2) must include, as a minimum, taking reasonable steps to verify in relation to the Borrower or Issuer (as applicable):

(a) its identity, including details of its incorporation and business registration; and

(b) the identity and place of domicile of each of its Directors, officers and Controllers.

(4) The AFSA may by written notice, require an Authorised Crowdfunding Platform to conduct additional due diligence on Borrowers and/or Issuers before such Borrowers and/or Issuers are permitted to use the service provided by the Authorised Crowdfunding Platform.

7.3.7 Disclosure of information about the Borrower or Issuer

(1) An Authorised Crowdfunding Platform must disclose prominently on its website relevant information about each Borrower or Issuer, including as a minimum:

(a) the name of the Borrower or Issuer, the full name and position of each of its Directors and officers and the full name of each Controller;

(b) the place of incorporation of the Borrower or Issuer and the place of domicile of each Director, officer and Controller;

(c) a description of the Borrower or Issuer's business;

(d) a detailed description of the proposal for which it is seeking funding including:

(i) the target level of funding sought and what will happen if that level is not met or is exceeded; and

(ii) how the funds will be used.

(e) the results of any due diligence carried out by the Authorised Crowdfunding Platform on the Borrower or Issuer and any limits on the due diligence that could be carried out;

(f) the grading or rating by the Authorised Crowdfunding Platform of the Borrower or Issuer's creditworthiness (if any), including:

(i) how the grading or rating has been assessed;

(ii) an explanation of what the different grading or rating levels mean; and

(iii) a clear statement that this should not be taken as advice about whether money should be lent to the Borrower or an Investment should be made with the Issuer;

(g) that the Borrower or Issuer, and information provided about the Borrower or Issuer, are not checked or approved by the AFSA; and

(h) other disclosure documents that contain the necessary information which is material to Retail Investors or Retail Lenders for making an informed investment decision.

(2) The disclosures referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.8 Disclosure of information about the Permitted Loan or Permitted Investment

(1) An Authorised Crowdfunding Platform must disclose prominently on its website relevant information about each Permitted Loan or Permitted Investment offered by a Borrower (as applicable), including as a minimum:

(a) for a Permitted Loan, the duration of the Permitted Loan, details of interest payable and any other rights attaching to the Permitted Loan;

(b) for an issue of Permitted Investments, any rights attaching to the Permitted Investments, such as a dividend, voting or pre-emption rights;

(c) whether any security is being provided and, if so, the details of that security including the circumstances in which it might be exercised and any limitations on its use;

(d) for a Permitted Loan, if applicable, any other reward or benefit attaching to the Permitted Loan and the terms on which it is available; and

(e) for an issue of Permitted Investments, whether Investors have any protection from their interest or holding being diluted by the issue of further Permitted Investments.

(2) The disclosures referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.9 Proposals not to be advertised outside platform

(1) An Authorised Crowdfunding Platform must:

(a) not advertise a specific lending or Investment proposal that is available on the Authorised Crowdfunding Platform; and

(b) take reasonable steps to ensure that Borrowers or Issuers that use the Authorised Crowdfunding Platform do not advertise the lending or Investment proposal,

unless the advertisement is made on the platform and is accessible only to existing Clients who use the Authorised Crowdfunding Platform.

7.3.10 Material changes affecting a Borrower or Issuer

(1) This Rule applies if, in the reasonable opinion of an Authorised Crowdfunding Platform, a material change occurs relating to a Borrower or Issuer, its business, its proposal or the carrying out of its proposal.

(2) In this Rule, a "material change" means any change or new matter that may significantly affect the Borrower or Issuer's ability to meet its payment obligations under the loan agreement or its ability to carry out its proposal.

(3) If the material change occurs during the Commitment Period, an Authorised Crowdfunding Platform must:

(a) notify committed lenders or Investors of the material change and require them to reconfirm their commitment within 5 business days; and

(b) if reconfirmation is not provided within the period specified in (a), cancel the commitment.

(4) If the material change occurs after the Commitment Period, an Authorised Crowdfunding Platform must disclose prominently on its website:

(a) details of the material change;

(b) any change in the rights of the lenders and the Borrower, or the Investors and Issuer, arising from the material change; and

(c) what steps, if any, the operator is proposing to take as a result of the change.

(5) A disclosure or notification under (3) or (4) must be made as soon as practicable after the Authorised Crowdfunding Platform becomes aware of the material change.

7.3.11 Borrower or Issuer use of other platforms

(1) An Authorised Crowdfunding Platform must:

(a) take reasonable steps to identify where a Borrower or Issuer is seeking, or proposes to seek, funding on another Authorised Crowdfunding Platform during the Commitment Period; and

(b) where it identifies that a Borrower or Issuer is seeking, or proposes to seek, funding on another Authorised Crowdfunding Platform during the Commitment Period, disclose this fact to lenders or Investors.

7.3.12 Equal treatment of lenders or Investors

(1) An Authorised Crowdfunding Platform must ensure that lenders or Investors who use its service are able to have access to the same information on its website about a Borrower or a lending proposal or an Issuer or an Investment proposal, and that access to the information is provided at the same time.

(2) If an Authorised Crowdfunding Platform provides an auto-lending or auto-investment system, or any other facility that provides some lenders or Investors with the opportunity to lend money ahead of other lenders or Investors, it must disclose prominently on its website that some lenders or Investors may have preferential access to alternative proposals or terms.

7.3.13 No suitability disclosure

(1) If an Authorised Crowdfunding Platform provides an auto-lending or auto-investment system it must disclose prominently to lenders or Investors who use the facility that no assessment is made that any Permitted Loan or Permitted Investment selected by the system is suitable for the lender or Investor.

7.3.14 An Authorised Crowdfunding Platform not to permit staff to use the platform

(1) An Authorised Crowdfunding Platform must take reasonable steps to ensure that its officers, employees, their Family Members and any Related Persons do not:

(a) lend money or provide finance to a Borrower or Issuer;

(b) borrow money from a lender or receive funding from an Investor; or

(c) hold any direct or indirect interest in the capital or voting rights of a Borrower or lender or an Issuer or Investor.

7.3.15 Forums

(1) If an Authorised Crowdfunding Platform provides a means of communication (a "forum") for Borrowers and lenders or Issuers and Investors to discuss funding proposals made using the service, it must:

(a) refer lenders or Investors to the forum as a place where they can find, or take part in, further discussion about proposals, while clearly stating that the Authorised Crowdfunding Platform does not conduct due diligence on information on the forum;

(b) restrict posting of comments on the forum to Persons who are Clients using the service;

(c) ensure that all Clients using the forum have equal access to information posted on the forum;

(d) require a Person posting a comment on the forum to disclose clearly if he is affiliated in any way with a Borrower or Issuer or is being compensated, directly or indirectly, to promote a proposal by a Borrower or Issuer;

(e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent;

(f) immediately take steps to remove a post, or to require a post to be deleted or amended, if an Authorised Crowdfunding Platform becomes aware that (d) or (e) have not been complied with; and

(g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

7.3.16 Facility for transfer of Permitted Loans or Permitted Investments

(1) If an Authorised Crowdfunding Platform provides a facility that assists the transfer of rights or obligations under a Permitted Loan or the sale of Permitted Investments, it must ensure that (as applicable):

(a) the facility relates only to Permitted Loans or Permitted Investments originally facilitated using its service;

(b) transfers can take place only between lenders or Investors who are already Clients using the service and have initially lent money under a Permitted Loan or initially subscribed for Permitted Investments using the service;

(c) in the case of a Permitted Loan, the facility allows only a lender (and not the Borrower) to transfer rights and obligations under the agreement;

(d) in the case of a Permitted Loan, a lender must transfer the rights and obligations relating to the whole of a Permitted Loan made (and not just a part of the Permitted Loan);

(e) potential transferees or buyers have access to all information on the website about the Borrower or Issuer that was available to earlier lenders; and

(f) fees it charges for the use of the facility are designed to recover its costs of providing the facility, rather than generating additional income.

7.3.17 Business cessation plan

(1) An Authorised Crowdfunding Platform must:

(a) maintain a business cessation plan that sets out appropriate contingency arrangements to ensure the orderly administration of Permitted Loans in the event that it ceases to carry on its business (including details of how any Loan Administrator, administrator and/or nominee company will continue to operate following the cessation of business); and

(b) ensure, as far as reasonably practicable, that the contingency arrangements can be implemented if necessary.

7.3.18 AFSA power to impose a prohibition or requirement

(1) The AFSA may prohibit an Authorised Crowdfunding Platform from:

(a) entering into certain specified transactions or agreements or types of transactions or agreements; or

(b) outsourcing any of its functions or activities to a third party.

(2) The AFSA may, by written notice or guidance, set fees payable by an Authorised Crowdfunding Platforms to the AFSA on certain specified transactions or types of transactions.

7.3.19 Complaints

(1) An Authorised Crowdfunding Platform shall establish and maintain written policies and procedures to resolve complaints made against it or other parties (including Clients) in a fair and timely manner.

(2) An Authorised Crowdfunding Platform must provide, in a clear and conspicuous manner: on its website or websites; in all physical locations; and in any other location the AFSA may prescribe, the following disclosures:

(a) the mailing address, email address and telephone number for the receipt of complaints;

(b) a statement that the complainant may also bring his or her complaint to the attention of the AFSA;

(c) the AFSA's mailing address, website and telephone number; and

(d) such other information as the AFSA may require.

(3) An Authorised Crowdfunding Platform shall report to the AFSA any change in its complaints policies or procedures within ten days of such change being made.

(4) An Authorised Crowdfunding Platform must maintain a record of any complaint made against it or other parties (including Clients) for a minimum period of six years from the date of receipt of the complaint.

7.3.20 Obligation to report transactions

(1) An Authorised Crowdfunding Platform shall report to the AFSA details of transactions which are executed through its platform.

(2) The AFSA may, by written notice or Guidance, specify:

(a) the information to be included in reports made under (1); and

(b) the manner in which such reports are to be made.

7.3.21 Cooling-off period

(1) An Authorised Crowdfunding Platform must ensure that lenders or Investors who have committed to providing funding to a particular Borrower or purchasing an Permitted Investment or Permitted Loan from a particular Issuer or Borrower may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.

(2) In (1), "cooling-off period" means the period of at least 48 hours starting at the end of the Commitment Period.

7.3.22 Target funding amount

(1) An Authorised Crowdfunding Platform must ensure that all loan proceeds are only provided to the Borrower or offering proceeds are only provided to the Investor when the aggregate capital raised from all lenders or Investors is equal to or greater than the target funding amount and allow all lenders or Investors to cancel their commitments to lend or invest, as the AFSA shall determine appropriate.

7.3.23 Lending and Investment limits

(1) An Authorised Crowdfunding Platform must maintain effective systems and controls to ensure that a Retail Lender or Retail Investor using its service does not lend or Invest, in respect of any single Borrower or Issuer and in aggregate calculated over a period of 12 months, an amount which exceeds the greater of:

(a) USD 2,000; or

(b) the lesser of

(i) 10 percent of the annual income; or

(ii) 5 percent of net worth of such Retail Lender or Retail Investor (excluding the value of the primary residence), up to a maximum aggregate amount of USD100,000.

7.3.24 Fundraising limits

(1) An Authorised Crowdfunding Platform must maintain effective systems and controls to ensure that:

(a) a Borrower does not borrow from:

(i) Retail Lenders more than USD 5,000,000 in total; and

(ii) Accredited Lenders more than USD 50,000,000 in total; and/or

(b) the total aggregate consideration for the Permitted Investments offered by an Issuer to:

(i) Retail Investors using its service is USD 5,000,000 or less; and

(ii) Accredited Investors using its service is USD 50,000,000 or less;

or an equivalent amount in another currency, calculated over a period of 12 months.

7.3.25 Market Rules

(1) The issue of Permitted Investments or Debentures may result in the application of requirements under the Markets Rules (MAR) such as Market Abuse provisions or, if an offer is not an Exempt Offer or offer of Securities by way of placement, Prospectus requirements.

7.4. Additional Requirements for Loan Crowdfunding Platforms

7.4.1 Written loan agreement

(1) A Loan Crowdfunding Platform must ensure that, when a Permitted Loan is made using its service, there is a written loan agreement in place between the Borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the Borrower and lender.

7.4.2 Loan Administration

(1) A Loan Crowdfunding Platform must have in place arrangements to administer the collection of amounts due and payable under a Permitted Loan.

(2) The arrangements in (1) shall include procedures for taking steps to collect overdue amounts and/or enforce a Permitted Loan in default on behalf of lenders including such steps as are necessary to enforce any security or apply any collateral that the Borrower may have provided in connection with the Permitted Loan;

(3) The arrangements in (1) may be carried out by the Loan Crowdfunding Platform by itself or by such other Person as the Loan Crowdfunding Platform may appoint (a "**Loan Administrator**").

SCHEDULE 1: COMMODITY DERIVATIVE CONTRACT DELIVERY SPECIFICATIONS

1. Application

This Schedule applies to an Authorised Market Institution which trades, or clears or settles, on its facilities Commodity Derivative contracts which require physical delivery of the underlying commodity.

2. Deliverability of the underlying commodity

An Authorised Market Institution must, for the purposes of meeting the requirement in AMI 3.2.2-1.(1)(c) ensure that the terms and conditions of the Commodity Derivative contracts which are to be traded, or cleared or settled, on its facilities, are designed to include the matters specified in this Schedule.

3. Quality or deliverable grade

A Commodity Derivative contract must include specifications of commodity characteristics for par delivery, including those relating to grade, class, and weight. The quality or grade specified must conform to the prevailing practices in the underlying physical market relating to the relevant commodity.

Guidance

Par delivery envisages delivery of commodities which are of a comparable quality or grade as specified in the contract. Contracts that call for delivery of a specific quality of commodity may provide commercial participants with a clearer, more efficient hedging and price-basing contracts than a contract that permits delivery of a broad range of commodity grades or classes.

However, as contracts that permit delivery of only a specific grade of commodity may be susceptible to manipulation if that grade of the commodity is in short supply or controlled by a limited number of sellers, an Authorised Market Institution should require appropriate measures to mitigate such risks.

4. Size of delivery unit

A Commodity Derivative contract must contain provisions relating to size or composition of delivery units which conform to the prevailing market practice in the underlying physical market to ensure that it does not constitute a barrier to delivery or otherwise impede the performance of the contract.

Guidance

An Authorised Market Institution should, if the provisions relating to size and delivery units of the Commodity Derivatives contract deviate from the underlying physical market, examine the reasons for such deviation and ensure that the risks arising from such deviation can be effectively addressed by the contract parties.

5. Delivery instruments

A Commodity Derivative contract must specify the acceptable form or type of delivery instruments, and whether such instruments are negotiable or assignable and, if so, on what conditions.

Guidance

Acceptable delivery instruments include legally acceptable warehouse receipts, bills of lading, shipping certificates, demand certificates, or collateralized depository receipts.

6. The delivery process and facilities

A Commodity Derivative contract must specify:

(a) the delivery process, including timing, location, manner and form of delivery, and

(b) the delivery or storage facilities available, which conform to the prevailing practices in the underlying physical market to permit effective monitoring and to reduce the likelihood of disruption.

Guidance

An Authorised Market Institution should consider issues associated with the delivery process, including those relating to acceptable delivery locations. Such issues include:

(a) the level of deliverable supplies normally available, including the seasonal distribution of such supplies;

(b) the nature of the physical market at the delivery point (e.g., auction market, buying station or export terminal);

(c) the number of major buyers and sellers; and

(d) normal commercial practices in establishing cash commodity values.

The delivery months specified in the commodity derivative contract should take into account cyclical production and demand and accord with when sufficient deliverable supplies are expected to exist in the underlying physical market. Seasonality of a commodity should also be taken into account in relation to transport and storage, as it may affect the availability of warehouse space and transportation facilities.

Consistent with the grade differentials noted above, commodity derivative contracts that permit delivery in more than one location should set delivery premiums or discounts consistent with those observed in the underlying physical market. The adequacy of transportation links to and from the delivery point should also be taken into account when setting delivery premiums.

The delivery facilities available can include oil or gas storage facilities, warehouses or elevators for agricultural commodities and bank or vault depositories for precious metals.

An Authorised Market Institution should consider issues relating to the selection of delivery facilities under the contract which include:

(a) the number and total capacity of facilities meeting contract requirements;

(b) the proportion of such capacity expected to be available for short traders who may wish to make delivery against commodity derivative contracts and seasonal changes in such proportions;

(c) the extent to which ownership and control of such facilities is dispersed or concentrated; and

(d) its ability to access necessary information from such facility.

7. Inspection and certification procedures

A Commodity Derivative contract must specify applicable inspection or certification procedures for verifying that the delivered commodity meets the quality or grade specified in the contract, which conform to the prevailing practices in the underlying physical market.

Guidance

If the commodity is perishable, the commodity derivative contract should specify if there are any limits on the duration of the inspection certificate and the existence of any discounts applicable to deliveries of a given age.

8. Payment for transportation or storage

A Commodity Derivative contract must specify:

(a) the respective responsibilities of the parties to the contract regarding costs associated with transporting the commodity to and from the designated delivery point and any applicable storage costs; and

(b) how and when title to the commodity transfers, including from any short to long position holder.

9. Legal enforceability

A Commodity Derivative contract must, where any one or more of the activities of trading, clearing or settlement under the contract take place in different jurisdictions, contain adequate arrangements to mitigate risks arising from any disparity between governing laws applicable in the relevant jurisdictions.

Guidance

An Authorised Market Institution should, when assessing whether the contractual terms adequately provide for addressing jurisdictional risks, take into account:

(a) whether the contract clearly identifies the different legal requirements applicable in the relevant jurisdictions and any differences, including those relating to the manner in which standard clauses are interpreted;

(b) the impact such differences may have in dealing with matters such as delivery disputes, and determination of rights in insolvency proceedings; and

(c) whether the contract contains effective measures to address risk of unenforceability of the contractual terms, particularly those relating to cargos and storage where jurisdictional differences could have a significant impact on the deliverability.

10. Default provisions and force majeure

A Commodity Derivative contract must specify:

(a) the rights and obligations of the parties to the contract in the event of default by the parties, or in the event of frustration of the contract due to force majeure or other specified event; and

(b) whether any Clearing House guaranties the settlement of the transaction in an event specified in (a), and if so, the manner in which such settlement would occur.

Guidance

An Authorised Market Institution, when considering whether a Commodities Derivative contract adequately provides for contract certainty in the event of default or force majeure, should take into account:

(a) whether any collateral provided by the contracting parties would be sufficient to address the replacement risk in the performance of the contract; and

(b) whether there are any monetary consequences attaching to defaulting parties that would act as a disincentive against default.

The contract terms should clearly specify which jurisdictional laws are applicable to the governing law, including where there are any significant variations in the rights and liabilities attaching to the contracting parties for the events that occur in the relevant jurisdiction.

SCHEDULE 2: TRADE REPOSITORY

Requirements applicable to Trade Repositories

1. Disclosure of market data by Trade Repositories

A Trade Repository must provide data in line with regulatory and industry expectations to relevant regulatory authorities and the public. Such information must be comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.

Guidance

(1) At a minimum, a Trade Repository should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, reference entities, or currency breakdowns of products), as available and appropriate, to the public.

(2) Relevant regulatory authorities should be given access to additional data recorded in a Trade Repository, including participant-level data, as relevant to the respective mandates and legal responsibilities of the relevant regulatory authority (such as market regulation and surveillance, oversight of exchanges, and prudential supervision or prevention of market misconduct).

2. Processes and procedures

A Trade Repository must have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

Guidance

A Trade Repository should have procedures to facilitate enhanced monitoring, special actions, or official proceedings taken by relevant authorities in relation to data on troubled or failed participants by making relevant information in the Trade Repository available in a timely and effective manner. The provision of data from a Trade Repository to relevant authorities should be supported from a legal, procedural, operational, and technological perspective.

3. Information systems

A Trade Repository must have robust information systems that enable it to provide accurate current and historical data. Such Data should be provided in a timely manner and in a format that permits it to be easily analysed.

Guidance

A Trade Repository should collect, store, and provide data to participants, regulatory authorities, and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets.