



## **AMENDMENTS № 13 TO AIFC CONDUCT OF BUSINESS RULES**

**Approval Date: 15 December 2024**

**Commencement Date: 1 January 2025**

**Astana, Kazakhstan**

Annex  
to the Explanatory Note on  
Derivatives framework, enabling  
Margin Trading, Short Selling and  
High Frequency Trading

## PROPOSED AMENDMENTS TO AIFC CONDUCT OF BUSINESS RULES

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

(...)

### 3. COMMUNICATIONS WITH CLIENTS AND FINANCIAL PROMOTIONS

(...)

#### 3.3. Financial Promotions

(...)

##### 3.3.5. Content of a Financial Promotion

(1) An Authorised Promoter must ensure that any Financial Promotion that it communicates or approves contains the information in Schedule 5.

(2) Where an Authorised Firm presents any marketing or educational materials and other communications relating to a Derivative on a website, in general media or as part of a distribution made to existing or potential Clients, it must include a risk warning in a prominent place at or near the top of each page of the materials or communication.

(3) The risk warning referred to in (2) must set out the risks associated with trading in the Derivative of the type referred to in the materials or communications, in a clear, concise and easy to understand manner.

(4) If the material referred to in (2) is provided on a website or an application that can be downloaded to a mobile device, the warning must be:

(a) statically fixed and visible at the top of the screen; and

(b) included on each linked webpage on the website.

(...)

### 4. KEY INFORMATION AND CLIENT AGREEMENT

(...)

#### 4.7. Provision of key features document relating to Derivatives

(1) An Authorised Firm must not provide a Financial Service relating to Derivatives unless it has provided the Client with a key features document containing the information in (2) and taken reasonable steps to ensure that the Client understands the nature of the risks involved.

(2) The key features document must contain the applicable information in respect of each Derivative relevant to the Financial Services that the Authorised Firm will provide to the Client:

(a) the description, risk warning on risks associated with and essential characteristics of Derivative instrument;

(b) the risks associated with and essential characteristics of type of transaction, including the need for margin payments, the potential for total loss, and the specific risks of transactions;

- (c) the importance of understanding all commissions and charges before engaging in transactions, particularly when these charges are expressed as percentages rather than in monetary terms;
- (d) the risks associated with and essential characteristics of trading suspensions, including the difficulty or impossibility of liquidating positions during rapid price movements, and the stop-loss orders will not necessarily limit losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.

(3) The key features document must be provided:

- (a) in writing and in good time before the relevant Financial Service is provided to the Person, to enable that Person to make an informed decision about whether to use the relevant Financial Service;
- (b) in a stand alone document and not be part of the Client Agreement or any other document provided to the Client.

(4) The key features document does not need to be provided to a Person to whom the Authorised Firm has previously provided that information, if there has been no significant change since the information was previously provided.

(5) The AFSA may, by written notice or Guidance, set more detailed requirements to key features document relating to Derivatives.

#### **Guidance: risk warning**

An Authorised Firm should provide that Client with a risk warning, which states that:

- (a) the types of contracts which the Authorised Firm will be entering into with the person are complex financial instruments where the loss or profit of the person is determined by reference to the movement of the value or price of the underlying reference;
- (b) this type of trading in complex financial instruments has a high probability of the person losing money rapidly, particularly due to the gain or loss being leveraged, based on the fluctuation of the price of the underlying reference; and
- (c) before deciding to trade in a Derivative, the person needs to understand how the Derivative offered work, and whether the person can afford to take the risk of losing money.

(...)

## **5. CONDUCT OF INVESTMENT BUSINESS**

(...)

### **5.3.4. Nature of appropriateness assessment**

(1) The Authorised Firm must assess whether the Client has the necessary knowledge and experience in order to understand the risks involved in relation to the relevant Investment or Investment Service.

(2) An Authorised Firm must not Deal in a Derivative with a Retail Client, unless the Authorised Firm has carried out an appropriateness assessment of the Retail Client and formed a reasonable view that the Retail Client has:

- (a) adequate skills and expertise to understand the risks involved in trading in the type of Derivative; and
- (b) the ability to absorb potential significant losses resulting from trading in the Derivative due to leverage.

#### **Guidance**

(1) For the purpose of forming the reasonable view referred to in COB Rule 5.3.4 (2) in relation to a Retail Client, an Authorised Firm needs to consider at a minimum whether that Retail Client:

- (a) has sufficient knowledge and experience in relation to the Derivative of the type offered, having regard to factors such as:
  - (i) how often and in what volumes that Retail Client has traded in the relevant type of Derivative; and
  - (ii) the Retail Client's relevant qualifications, profession or former profession;
- (b) understands the characteristics and risks, including those relating to the underlying reference and the degree of volatility of the markets or prices affecting that underlying reference;
- (c) understands the impact of leverage, due to which there is potential to make significant losses in trading in a Derivative; and
- (d) has the ability, particularly in terms of net assets and liquidity available to the Retail Client, to absorb and manage any losses that may result from trading in the Derivative offered.

(2) To be able to demonstrate to the AFSA that it has undertaken a proper appropriateness assessment, an Authorised Firm should have in place systems and controls that include:

- (a) pre-determined and clear criteria against which a Retail Client's ability to trade in a Derivative can be assessed;
- (b) adequate records to demonstrate that the Authorised Firm has undertaken the appropriateness assessment in respect of each Retail Client; and
- (c) in the case of an existing Retail Client with whom the Authorised Firm has previously traded in a Derivative, procedures to undertake a fresh appropriateness assessment if:
  - (i) a new Derivative with a materially different risk profile is offered to that Retail Client; or
  - (ii) there has been a material change in the Retail Client's circumstances.

(3) Where an Authorised Firm forms the view that it is not appropriate for a person to trade in a Derivative, the Authorised Firm needs to refrain from offering that service. As a matter of good practice, the Authorised Firm should inform the Client of the firm's decision.

(...)

## **5.7. Derivatives — limits in relation to Retail Clients**

(1) Authorised Firms providing a Financial Service with Derivatives to a Retail Client must impose at least the following limits:

- (a) Margin requirements. An Authorised Firm that Deals in a Derivatives must not open a position with a Retail Client unless the Retail Client has posted a margin. The amount of margin must be set out by Authorised Firms as a percentage of the value of the exposure.

In this Rule, "margin" means the pre-agreed amount a Retail Client is required to pay to open a position in relation to a Derivative.

- (b) Margin close out requirements. An Authorised Firm that Deals in a Derivative must ensure that the net equity in a Retail Client's account does not fall below 50% of the overall margin deposited in that account. Where a Retail Client's net equity falls below 50% of the overall margin deposited in that account, the Authorised Firm must close all open positions in the Retail Client's account:

- (i) as soon as market conditions allow; and
- (ii) in accordance with the best execution requirement in COB.

In this Rule, “net equity” means the sum of the Retail Client’s net profit and loss on their open positions and the Retail Client’s deposited margin.

(c) Negative balance protection. The liability of a Retail Client, for all Derivatives connected to that Retail Client’s trading account with an Authorised Firm that Deals in a Derivative, is limited to the funds in that trading account.

(d) Offer of incentives prohibited. An Authorised Firm must not offer or provide to a Retail Client any incentive that influences, or is reasonably likely to influence, the Retail Client to trade in a Derivative.

(e) Prohibition on the use of credit to fund an account. An Authorised Firm that Deals in a Derivative must take reasonable steps to ensure that a Retail Client does not use a credit card or third party credit facility to pay a margin.

(2) The AFSA may, by written notice or Guidance, require an Authorised Firm providing a Financial Service with Derivatives to a Retail Client to set specified limits or waive or modify limits from 5.6 (1).

**Guidance: negative balance protection**

(1) The effect of the above Rule is to prevent a Retail Client from incurring losses exceeding the funds the Retail Client has specifically dedicated to trading in Derivatives. As a result, an Authorised Firm that has opened a trading account for a Retail Client to trade in Derivatives will not be able to recover any losses from the Retail Client that go beyond the funds in the Retail Client’s trading account.

(2) Funds in the Retail Client’s trading account are generally cash in the account and include unrealised net profits from open positions (i.e. the sum of unrealised gains and losses of all open positions recorded in the Retail Client’s account) in respect of all Derivatives held in the Retail Client’s trading account.

**Guidance: offer of incentives prohibited**

(1) The prohibition to offer of incentives applies to an Authorised Firm who Deals in Derivatives either as principal or as agent with or for Retail Clients, as well as an Authorised Firm that gives advice on or arrange deals in Derivatives. An Authorised Firm’s systems and controls need to have measures to prevent not only the Authorised Firm, but also any person acting for or on behalf of the Authorised Firm, from offering or providing incentives.

(2) Incentives include bonus offers, gifts, rebates of fees, or any form of reward in relation to the opening of a new account or trading in a new type of Derivative offered to an existing or potential Retail Client.

Annex  
to the Explanatory Note on  
enhancements to Credit Rating  
Agencies framework

## PROPOSED AMENDMENTS TO AIFC CONDUCT OF BUSINESS RULES

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

(...)

### 1. APPLICATION

(...)

#### 1.2.2. Exclusions in relation to certain categories of Centre Participant

For the avoidance of doubt, the requirements in COB do not apply to:

- (a) a Representative Office;
- (b) an Authorised Market Institution (other than an Authorised Crowdfunding Platform), except for COB 3 (Communications with Clients and Financial Promotions), unless otherwise provided under Rules made by the AFSA;
- (c) an Authorised Crowdfunding Platform, except for COB 3 (Communications with Clients and Financial Promotions), COB 4 (Key Information and Client Agreement);
- (d) intentionally omitted
- (e) a MTF Operator and an OTF Operator, except for COB 15 (Complaints Handling and Dispute Resolution);
- (f) a Credit Rating Agency, except for COB 14 (Credit Rating Agencies).

(...)

#### ~~1.2.6. Application in respect of Credit Rating Agencies~~

~~The requirements in COB do not apply to Credit Rating Agencies, with the exception of COB 14 (Credit Rating Agencies).~~

#### **Guidance: Credit Rating Agencies**

~~In order to ensure that Credit Rating Agencies provide independent analyses and opinions, COB 14 requires Credit Rating Agencies to comply with high-level principles that are based on international standards promoted by the International Organisation of Securities Commissions.~~

## 14. CREDIT RATING AGENCIES

### 14.1. Application

~~The Principles set out in COB 14.2 apply to Credit Rating Agencies.~~

In addition to the Principles in sections GEN 4.1 and GEN 4.2, the Principles in 14.2 apply to Credit Rating Agency.

### 14.2. Additional Principles for Credit Rating Agencies