



**AIFC MULTILATERAL AND ORGANISED  
TRADING FACILITIES RULES**

**(MOTF)**

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## AIFC MULTILATERAL AND ORGANISED TRADING FACILITIES RULES

### 1. GENERAL

#### 1.1. Application of these Rules

These Rules, which may be cited as the AIFC Multilateral and Organised Trading Facilities Rules (“MOTF”), apply to a Person with respect to:

- (a) the operation, in or from the AIFC, of a Multilateral Trading Facility; or
- (b) the operation, in or from the AIFC, of an Organised Trading Facility.

#### Guidance

A MTF Operator or an OTF Operator is an Authorised Firm to which the following provisions of GEN are applicable either directly or in respect of their 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.

MOTF supplement, and should be read in conjunction with, GEN.

PRU(INV) Rules do not apply to a MTF Operator or an OTF Operator. As an Authorised Person, a MTF Operator or an OTF Operator also needs to comply with the wider Rulebooks relevant to all Authorised Persons, including AML.

#### 1.2. Definitions

- (1) A Trading Facility is a facility on which investments, rights or interests in Investments are traded. A Trading Facility may be a Multilateral Trading Facility (“MTF”) or an Organised Trading Facility (“OTF”).
- (2) A Multilateral Trading Facility is operated by a MTF Operator while an Organised Trading Facility is operated by an OTF Operator.
- (3) A MTF Operator is a Centre Participant which has been licensed by the AFSA to carry on the Regulated Activity of Operating a Multilateral Trading Facility.
- (4) An OTF Operator is a Centre Participant which has been licensed by the AFSA to carry on the Regulated Activity of Operating an Organised Trading Facility.
- (5) A Trading Facility Operator is either a MTF Operator or an OTF Operator.

#### Guidance

Operating a Multilateral Trading Facility and Operating an Organised Trading Facility are defined as Regulated Activities in Schedule 1 of GEN.



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For MTF Operators, one of the important requirements concerns the obligation that the Investments, rights, or interests in Investments be brought together in the system through non-discretionary rules set by the Operator. That requirement means that they are brought together under the Operator's rules or through the Operator's protocols or internal operating procedures, including procedures embodied in computer software. The term 'non-discretionary rules' means rules that leave the Operator with no discretion as to how Investments, rights, or interests in Investments may interact. The definition requires that Investments, rights, or interests in Investments be brought together in such a way as to result in a contract which occurs where execution takes place under the Operator's rules or through the Operator's protocols or internal operating procedures.

While MTF Operators have non-discretionary rules for the execution of transactions, OTF Operators should carry out order execution on a discretionary basis subject to the pre-transparency requirements and best execution obligations. Consequently, conduct of business rules, best execution and client order handling obligations should apply to the transactions executed by an OTF Operator.

### 1.3. Exclusions for order routing

For the purpose of these Rules, a Person does not operate a Trading Facility if it operates a facility which is an order routing system where buying and selling interests in, or orders for, financial instruments are merely transmitted but do not interact or consummate a trade.

## 2. AUTHORISATION

A Person wishing to operate a MTF or OTF must be an Authorised Firm licensed to operate a MTF or OTF, respectively, by the AFSA.

### 2.1. Requirements for Trading Facility Operator authorisation

The AFSA may not grant authorisation or variation to operate a MTF or OTF unless the applicant satisfies all of the following requirements:

- (1) general authorisation requirements applicable to the applicant under the Framework Regulations and other applicable rules, and
- (2) the applicant must hold the following minimum capital at all times:
  - (a) an amount equal to 6 months' operational expenses; plus
  - (b) an additional amount equal to 6 months' operational expenses, unless the AFSA directs otherwise.

### Guidance

According to PRU(INV) 1.3(8), if a PRU Investment Firm holds both an Authorisation to carry on PRU Investment Business and Non-PRU(INV) Investment Business, which includes Trading Facility Operators, it will be also subject to PRU(INV) Rules in relation to the whole of its business, including its Non-PRU(INV) Investment Business. However, the AFSA may direct that the PRU Investment Firm will be deemed to satisfy:

- (a) some or all of PRU(INV) Rules if it satisfies the rules that apply to it by reason of the Authorisation to carry on Non-PRU(INV) Investment Business; or



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(b) some or all of the rules that apply to it by reason of the Authorisation to carry on Non-PRU(INV) Investment Business where it satisfies the PRU(INV) Rules.

### 3. MEMBERSHIP CRITERIA AND ACCESS

#### 3.1. Admission criteria

- (1) A Trading Facility Operator must ensure that access to its facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors.
- (2) A Trading Facility Operator may, subject to MOTF 3.2(2) and (3), accept as a Member:
  - (a) an Authorised Firm;
  - (b) a Body Corporate other than the Authorised Firm; or
  - (c) a Person not referred to in (a) and (b), only if:
    - (i) the facility is one on which Qualified Investments are traded; and
    - (ii) the Person's access is only for trading Qualified Investments.
- (3) The AFSA may, if it considers on reasonable grounds that it is appropriate to do so, require the Trading Facility Operator to have effective systems and controls in place to restrict the maximum number of Persons referred to in MOTF 3.1(2)(c) allowed to trade on its facility.

#### 3.2. Membership Rules

- (1) A Trading Facility Operator must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities. In particular, those rules must specify the obligations of users or Members of its facilities arising from:
  - (a) the constitution and administration of the Operator;
  - (b) rules relating to transactions on the Operator's market;
  - (c) in case of an Authorised Firm, its professional standards for staff having access to or membership of a financial market operated by the Operator;
  - (d) in case of a Body Corporate other than the Authorised Firm, conditions for access to or membership by Persons of a financial market operated by the Operator;
  - (e) in case of a natural person, conditions for access to or membership of a financial market operated by the Operator; and
  - (f) the rules and procedures for clearing and settlement of transactions.
- (2) A Trading Facility Operator may only give access to or admit to membership a Person who:
  - (a) is fit and proper and of good repute;
  - (b) if applicable, has a sufficient level of ability, competence and experience, including appropriate standards of conduct for its staff; and
  - (c) if applicable, has adequate organisational arrangements, including financial and technological resources.



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- (3) In assessing whether access to a Trading Facility Operator's facilities is subject to criteria designed to protect the orderly functioning of the market or of those facilities and the interests of investors, the AFSA may have regard to whether:
- (a) the Operator limits access as a Member to such Persons:
    - (i) over whom it can with reasonable certainty enforce its rules contractually;
    - (ii) who have sufficient technical competence to use its facilities; and
    - (iii) if appropriate, who have adequate financial resources in relation to their exposure to the Operator;
  - (b) indirect access to the Operator's facilities is subject to suitable criteria, remains the responsibility of a Member of the Operator and is subject to the Operator's rules; and
  - (c) the Operator's rules:
    - (i) set out the design and operation of the Operator's relevant systems;
    - (ii) set out the risk for Members and other users when accessing and using the Operator's facilities;
    - (iii) contain provisions for the resolution of Members' and other users' disputes and an appeal process for the decisions of the Operator;
    - (iv) contain disciplinary proceedings, including any sanctions that may be imposed by the Operator against its Members and other users; and
    - (v) set out other matters necessary for the proper functioning of the Operator and the facilities operated by it.

### 3.3. Lists of users or Members

A Trading Facility Operator must regularly make arrangements to provide the AFSA with a list of users or Members of its facilities.

## 4. DIRECT ELECTRONIC ACCESS

### 4.1. Permitting Members that are Body Corporates to provide Direct Electronic Access to clients

- (1) This rule applies if a Trading Facility Operator proposes to permit a Member that is a Body Corporate to provide its clients Direct Electronic Access to the Operator's facilities.
- (2) A Trading Facility Operator may permit a Member to provide its clients Direct Electronic Access to the Operator's facilities only if:
  - (a) the clients meet the suitability criteria established by the Member in order to meet the requirements in MOTF 4.2;
  - (b) the Member retains responsibility for the orders and trades executed by its clients who are using Direct Electronic Access; and



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

### 4.2. Criteria, standards and arrangements for providing Direct Electronic Access to clients of Members that are body corporates

- (1) A Trading Facility Operator which permits its Members to provide its clients Direct Electronic Access to the Operator's facilities under MOTF rule 4.1 must:
  - (a) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;
  - (b) be able to identify orders and trades made through Direct Electronic Access; and
  - (c) if necessary, be able to 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.
- (2) A client who is permitted to have Direct Electronic Access to an Operator's facilities through a Member is not, by virtue of such permission, a Member of the Operator. However, such client is subject to the jurisdiction of the MTF or OTF.
- (3) In determining whether a Trading Facility Operator has adequate arrangements to permit Direct Electronic Access to its facilities and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its facilities to Persons other than the Operator's Members, the AFSA may have regard to:
  - (a) the rules and guidance governing Members' procedures, controls and security arrangements for inputting instructions into the system;
  - (b) the rules and guidance governing the facilities that Members provide to its clients to input instructions into the system and the restrictions placed on the use of those systems;
  - (c) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;
  - (d) the quality and completeness of the audit trail of a transaction processed through an electronic connection system; and
  - (e) procedures to determine whether to suspend trading by those systems or access to them by or through individual Members.

### 4.3. Criteria, standards and arrangements for giving Direct Electronic Access to Members who are natural persons

- (1) This rule applies if a Trading Facility Operator proposes to give to a Member who is a natural person Direct Electronic Access to the Operator's facilities.
- (2) A Trading Facility Operator must ensure that:
  - (a) its rules clearly set out:





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- (i) the duties owed by the Operator to its Members with Direct Electronic Access, and how the Operator is held accountable for any failure to fulfil those duties; and
  - (ii) the duties owed by the Members with Direct Electronic Access to the Operator and how such Members are held accountable for any failure to fulfil those duties;
  - (b) appropriate investor redress mechanisms are available, in accordance with COB Chapter 15, and disclosed to Members permitted to trade Qualified Investments on its facility; and
  - (c) its facility contains a prominent disclosure of the risks associated with trading and clearing Qualified Investments.
- (3) Without limiting the generality of the systems and controls obligations of the Trading Facility Operator, the Operator must have adequate systems and controls to address market integrity, AML, CTF and investor protection risks in giving Direct Electronic Access to a Member, to trade on its facility, including procedures to:
- (a) ensure that appropriate customer due diligence sufficient to address AML and CTF risks has been conducted on each Member, before permitting the Member to trade on its facility;
  - (b) detect and address market manipulation and abuse; and
  - (c) ensure that there is adequate disclosure relating to the Qualified Investments that are traded on the facility.
- (4) A Trading Facility Operator must have adequate controls and procedures to ensure that trading in Qualified Investments by Members with Direct Electronic Access 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 such Members through adequate collateral management measures, such as margin requirements, based on the settlement cycle adopted by the Operator;
  - (b) identify and distinguish orders that are placed by such Members, and, if necessary, enable the Operator to stop orders of, or trading by, such Members;
  - (c) prevent such Members from allowing access to other Persons to trade on the trading facility; and
  - (d) ensure that such Members fully comply with the rules of the facility and promptly address any gaps and deficiencies that are identified.
- (5) A Trading Facility Operator must have adequate resources and systems to carry out front-line monitoring of the trading activities of Members with Direct Electronic Access.

## 5. QUALIFIED INVESTMENTS

### 5.1. Permitted products

- (1) A Trading Facility Operator may allow a product to be traded on its MTF or OTF only if the product is a financial or commodity product that is a Qualified Investment.



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- (2) In (1) a “Qualified Investment Token” is treated in the same way as the Qualified Investment which it represents.

### 5.2. Qualified Investments

- (1) Qualified Investment means a financial or commodity instrument, agreement or transaction under which, at a specified time or within a specified period of time:

- (a) a payment or delivery obligation is to be performed, or title to commodity or asset is to be transferred; or
- (b) an obligation to make payment or delivery, or to transfer title to commodity or asset, is to be entered into or incurred.

- (2) In particular, an instrument, agreement or transaction of one of the following kinds is a Qualified Investment:

- (a) a commodity swap;
- (b) a commodity derivative;
- (c) an emissions derivative, including an emissions allowance or emissions reduction transaction;
- (d) a spot, future, forward or other securities or commodities transaction;
- (e) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell back agreement;
- (f) a collateral arrangement under which the properties held are investment-based assets such as securities, units, derivatives or environmental instruments;
- (g) any other instrument, agreement or transaction similar to an instrument, agreement or transaction of a kind referred to in (a) to (f) with respect to one or more reference items relating to commodities, energy products, electricity, equities, weather, sukuk, bonds or other debt instruments and precious metals.

- (3) However, the following Financial Products are not Qualified Investments:

- (a) a Contract of Insurance entered into by a licensed or authorised insurance company as part of its insurance business; and
- (b) a Digital Asset.

- (4) In case of commodity derivative contracts which require physical delivery, a Trading Facility Operator must ensure that such contracts traded on its facilities 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 the matters specified in Schedule 1; and



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- (d) provide for legally enforceable settlement and delivery procedures.
- (4-1) A Trading Facility Operator must ensure that the derivatives traded on its facilities have a design that enables the orderly pricing and effective settlement of the obligations arising under the contract by having contract design specifications 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.
- (5) The AFSA may require a Person issuing certain Qualified Investments to provide a product summary note to investors. The AFSA may set out in guidance circumstances in which it is likely to exercise such power and the content of the product summary note.

### 5.3. Designation of financial products as Qualified Investments

- (1) The AFSA may, by publishing a notice to that effect, designate as a Qualified Investment any kind of instrument, agreement or transaction in addition to those specifically mentioned in MOTF 5.2.
- (2) The AFSA may, by publishing a notice to that effect, revoke the designation of any kind of instrument, agreement or transaction. However, the revocation of a designation does not apply:
  - (a) to an instrument, agreement or transaction entered into before the revocation; or
  - (b) to a transaction entered into (before or after the revocation) under an instrument or agreement:
    - (i) entered into before the revocation: or
    - (ii) to which an instrument or agreement entered into before the revocation applies.
- (3) The AFSA may exercise the power under MOTF 5.3(1) either upon written application made by a Person or on its own initiative.
- (4) Without limiting the generality of the matters that the AFSA may consider when exercising its power under MOTF 5.3(1), it must consider the following factors:
  - (a) the economic effect of the financial instrument or class of financial instruments;
  - (b) the class of potential investors to whom the financial instrument is intended to be marketed;



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- (c) the treatment of similar financial instruments for regulatory purposes in other jurisdictions; and
  - (d) the possible impact of such a declaration on any person issuing or marketing such a financial instrument.
- (5) A Person who makes an application for a designation under MOTF 5.3(1) must address, as far as practicable, the factors specified in MOTF 5.3(4).
- (6) The AFSA must publish any proposed designation under MOTF 5.3(1) for public consultation for at least thirty calendar days after the date of publication, except if:
- (a) it designates a financial product to be a particular type of an existing Investment, excluding a Digital Asset ;
  - (b) it determines that any delay likely to result from public consultation is prejudicial to the interests of the AIFC; or
  - (c) it determines that there is a commercial exigency that warrants such a declaration being made without any public consultation or being published shorter than the thirty-day consultation period.

### 6. RULES AND CONSULTATION

#### 6.1. Requirement to prepare, review and amend Business Rules

A Trading Facility Operator must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them (“Business Rules”). The procedures must include procedures for consulting users of the Operator’s facilities in appropriate cases.

#### 6.2. Amendment of rules

An amendment to a Trading Facility Operator’s Business Rules must, before the amendment becomes effective:

- (i) be made available for public consultation; and
- (ii) be approved by the AFSA.

#### 6.3. Waiver of consultation requirement

The AFSA may dispense with the requirement in MOTF 6.2(a)(i) in cases of emergency, force majeure, typographical errors, minor administrative matters, or to comply with applicable laws. A Trading Facility Operator must have procedures for notifying users of these amendments for which the ASFA has dispensed with public consultation.

#### 6.4. Public Consultation

- (1) A Trading Facility Operator must, before making any amendment to its Business Rules, undertake public consultation on the proposed amendment in accordance with the requirements in this Chapter.



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- (2) For these purposes, a Trading Facility Operator must publish a consultation paper setting out:
- (a) the text of both the proposed amendment and the Business Rules that are to be amended;
  - (b) the reasons for proposing the amendment; and
  - (c) a reasonable consultation period, which must not be less than thirty calendar days after the date of publication, within which Members and other stakeholders may provide comments.
- The Trading Facility Operator must lodge with the AFSA the consultation paper no later than the time when it is released for public comment.
- (3) The AFSA may, if it considers on reasonable grounds that it is appropriate to do so, require the Trading Facility Operator to extend its proposed period of public consultation specified in the consultation paper.
- (4) A Trading Facility Operator must:
- (a) facilitate, as appropriate, informal discussions on the proposed amendment with Members and other stakeholders including any appropriate representative bodies of such Persons;
  - (b) consider the impact the proposed amendment has on the interests of its Members and other stakeholders; and
  - (c) have proper regard to any public comments received.
- (5) Following public consultation, a Trading Facility Operator must publish the final Business Rules and consider whether it would be appropriate to discuss the comments received and any amendments made before publication.

### 6.5. Review of Rules

- (1) In determining whether a Trading Facility Operator's procedures for consulting Members and other users of its facilities are appropriate, the AFSA may have regard to:
- (a) the range of Persons to be consulted by the Trading Facility Operator under those procedures; and
  - (b) the extent to which the procedures include:
    - (i) informal discussions at an early stage with users of its facilities or appropriate representative bodies;
    - (ii) publication to users of its facilities of a formal consultation paper which includes clearly expressed reasons for the proposed changes and an appropriately detailed assessment of the likely costs and benefits;
    - (iii) adequate time for users of its facilities to respond to the consultation paper and for the Trading Facility Operator to take their responses properly into account;
    - (iv) adequate arrangements for making responses to consultation available for inspection by users of its facilities, unless the respondent requests otherwise; and



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- (v) adequate arrangements for ensuring that the Trading Facility Operator has proper regard to the representations received.
- (2) Consultation with a smaller range of Persons may be appropriate if limited, technical changes to an Operator's Business Rules are proposed. An Operator's procedures may include provision to restrict consultation if it is essential to make a change to the Business Rules without delay in order to ensure continued compliance with the Operator authorisation requirements or other legal obligations.

### 6.6. Additional requirement to prepare Business Rules

A Trading Facility Operator must incorporate into its Business Rules the substance of additional provisions to be found in the COB, for the purpose of regulating the conduct of business of a Person referred to in MOTF 3.1.(2)(b) or (c) as a Member of the Trading Facility Operator.

## 7. FAIR AND ORDERLY TRADING

- (1) A Trading Facility Operator 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.
- (2) A Trading Facility Operator must have an arrangement to effectively facilitate the efficient and timely finalisation of the transactions effected on and through its MTF or OTF.
- (3) In determining whether a Trading Facility Operator is ensuring that business conducted through its facilities is conducted in an orderly manner, the AFSA may have regard to the extent to which the Trading Facility Operator's rules and procedures:
  - (a) are consistent with these Rules;
  - (b) prohibit abusive trading practices, including reporting or publication of false or misleading information;
  - (c) prohibit or prevent:
    - (i) trades in which a party is improperly indemnified against losses;
    - (ii) trades intended to create a false appearance of trading activity;
    - (iii) cross trades executed for improper purposes;
    - (iv) front running of customer orders;
    - (v) improperly prearranged or pre-negotiated trades;
    - (vi) trades intended to assist or conceal any potentially identifiable trading abuse;
    - (vii) entering bids and offers with no underlying intention to deal at that price; and
    - (viii) market manipulation or price manipulation.
  - (d) include appropriate measures to prevent the use of its facilities for abusive or improper purposes;



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- (e) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;
- (f) provide appropriate information to enable users to monitor their use of the facilities;
- (g) include appropriate arrangements to enable users to raise queries about the use of the facilities for transactions which they are reported to have made;
- (h) include appropriate arrangements to enable users of its facilities to comply with any relevant regulatory or legal requirements; and
- (i) include appropriate arrangements to reduce the risk that those facilities are used in ways that are incompatible with relevant regulatory or legal requirements.

In this paragraph, “appropriate” is taken to mean appropriate having regard to the nature and scale of the Trading Facility Operator’s facilities, the types of Persons who use the facilities and the use which they make of those facilities.

- (4) In determining whether a Trading Facility Operator is ensuring that business conducted through its facilities is conducted in an orderly manner, the AFSA may have regard to whether the Operator’s arrangements and practices:
  - (a) enable Members and their clients for whom they act to obtain the best price available at the time for their size and type of trade;
  - (b) include procedures which enable the Operator to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and
  - (c) if the arrangements and practices support or encourage liquidity:
    - (i) are transparent;
    - (ii) are not likely to encourage any Person to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any client for whom he acts);
    - (iii) are consistent with a reliable, undistorted price-formation process; and
    - (iv) alleviate dealing or other identified costs associated with trading on the Operator’s markets and do not subsidise a market position of a user of its facilities.
- (5) A Trading Facility Operator must be able to suspend or remove a Qualified Investment or participant which no longer complies with its rules or otherwise violates these Rules. The Operator must immediately comply with a direction from the AFSA to suspend or remove a Qualified Investment or Member.
- (6) The rules of a Trading Facility Operator must provide that the Operator must not exercise its power to suspend or remove from trading on a market operated by it any Qualified Investment which no longer complies with one or more Operator’s rules, if such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the relevant market.



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### 8. PUBLIC DISCLOSURE

#### 8.1. General

- (1) Any arrangement to make information public must satisfy the following conditions:
  - (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
  - (b) it must facilitate the consolidation of the data with similar data from other sources; and
  - (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
- (2) For the purposes of MOTF 8.1((a)a(a), a verification process must be an independent cross-check of the accuracy of the information generated by the trading process and may or may not involve the use of an external publishing entity. This process must have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process must be reasonable and proportionate to the business.
- (3) In respect of arrangements for public disclosure in MOTF 8.1(1):
  - (a) For the purposes of MOTF 8.1(a)a(b), information is made public, if it:
    - (i) is accessible by automated electronic means in a machine-readable way;
    - (ii) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
    - (iii) is accompanied by instructions outlining how users can access the information.
  - (b) For the purposes of MOTF 8.1(a)(i)(i)(a)(i)(i), an arrangement fulfils the 'machine-readable' criteria if the data:
    - (i) is in a physical form that is designed to be read by a computer;
    - (ii) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
    - (iii) is in a format that is known in advance by the party wishing to access the data.
  - (c) Publication on a non-machine-readable website does not meet the requirements of MOTF 8.1(a)(i)(i)(1).
- (4) Information that is made public must conform to a consistent and structured format based on industry standards. A Trading Facility Operator can choose which structure to use.

#### 8.2. Proper information

In determining whether appropriate arrangements have been made to make relevant information available to Persons engaged in dealing in Qualified Investments admitted to trading on the Trading Facility Operator's facilities, the AFSA may have regard to:

- (1) the extent to which Members and their clients for whom they act are able to obtain information about those Qualified Investments, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media, to make





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a reasonably informed judgment about the value and the risks associated with those Qualified Investments in a timely manner;

- (2) what restrictions, if any, there are on the dissemination of relevant information to the Operator's Members and their clients for whom they act; and
- (3) whether relevant information is or can be kept to restricted groups of Persons in such a way as to facilitate or encourage dealing in contravention of these Rules.

### 8.3. Own means of dissemination

Trading Facility Operators do not need to maintain their own arrangements for disseminating news or information about Qualified Investments (or underlying assets) to their Members where they have made adequate arrangements for other Persons to do so on their behalf or there are other effective and reliable arrangements for this purpose.

## 9. TRANSPARENCY REQUIREMENTS

### 9.1. Pre-Trade Disclosure

- (1) A Trading Facility Operator must disclose to its users as appropriate, on a continuous basis during normal trading, the following information relating to trading of Qualified Investments on its MTF or OTF:
  - (a) the current bid and offer prices and volume;
  - (b) the depth of trading interest shown at the prices and volumes advertised through its systems for the Qualified Investments; and
  - (c) any other information relating to Qualified Investments which would promote transparency relating to trading.
- (2) The AFSA may waive or modify the disclosure requirement in MOTF 9.1 in relation to certain transactions where the order size is predetermined, exceeds a pre-set and published threshold level and the details of the exemption are made available to an Operator's Members and the public.
- (3) In assessing whether an exemption from pre-trade disclosure is allowed, the AFSA has regard to factors such as:
  - (a) the level of order threshold compared with normal market size for the Qualified Investment;
  - (b) the impact such an exemption would have on price discovery, fragmentation, fairness and overall market quality;
  - (c) whether there is sufficient transparency relating to trades executed without pre-trade disclosure (as a result of orders executed on execution platforms without pre-trade transparency), whether or not they are entered in transparent markets;
  - (d) whether the Trading Facility Operator supports transparent orders by giving priority to transparent orders over dark orders, for example, by executing such orders at the same price as transparent orders; and
  - (e) whether there is adequate disclosure of details relating to dark orders available to Members and other participants on the MTF or OTF to enable them to understand the manner in which their orders are handled and executed on the MTF or OTF.



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- (4) When making disclosure, a Trading Facility Operator must adopt a technical mechanism showing differentiations between transactions that have been recorded in the central order book and transactions that have been reported to the MTF or OTF as off-order book transactions. Any transactions that have been cancelled pursuant to its rules must also be identifiable.
- (5) A Trading Facility Operator must use appropriate mechanisms to enable pre-trade information to be made available to users in an easy to access and uninterrupted manner at least during business hours.

### 9.2. Post-Trade Disclosure

A Trading Facility Operator must disclose the price, volume and time of the transactions effected in respect of Qualified Investments to users as close to real-time as is technically possible on reasonable commercial terms and on a non-discretionary basis. An Operator must use adequate mechanisms to enable post-trade information to be made available to users in an easy to access and uninterrupted manner at least during business hours.

## 10. LIQUIDITY PROVIDER

- (1) A Trading Facility Operator must not introduce a liquidity incentive scheme unless:
  - (a) participation in such a scheme is limited to Members or any other Persons if:
    - (i) the Operator has undertaken due diligence to ensure that the Person is of good repute and has adequate competencies and, if applicable, organisational arrangements; and
    - (ii) the Person has agreed in writing to comply with the Operator's operating rules so far as those rules are applicable to that Person's activities; and
    - (iii) the Operator has obtained the prior approval of the AFSA.
- (2) For the purposes of this Chapter, a "liquidity incentive scheme" means an arrangement designed to provide liquidity to the market in relation to Qualified Investments traded on the MTF or OTF.
- (3) If a Trading Facility Operator proposes to introduce or amend a liquidity incentive scheme, it must lodge with the AFSA, at least ten business days before the date by which it expects to obtain the AFSA approval, a statement setting out:
  - (a) the details of the relevant scheme, including benefits to the MTF or OTF and Members arising from that scheme; and
  - (b) the date when the scheme is intended to become operative.
- (4) The AFSA must within ten business days after receiving the proposal referred to in MOTF 10(3), approve a proposed liquidity incentive scheme unless it has reasonable grounds to believe that the introduction of the scheme would be detrimental to the MTF or OTF or to markets in general. If the AFSA does not approve the proposed liquidity incentive scheme, it must notify the Trading Facility Operator of its objections to the introduction of the proposed liquidity incentive scheme, and its reasons for that decision.



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- (5) To enable interested parties to participate, a Trading Facility Operator must, within a reasonable period before the launch of a liquidity incentive scheme, announce the launch of the scheme, the date when the scheme starts and the contracts to which the scheme relates.

### 11. RULES APPLICABLE TO MTF OPERATORS

- (1) MTF Operators may not execute Member orders against proprietary capital, or engage in matched principal trading.
- (2) Each MTF Operator must establish rules prohibiting the execution of Member orders against proprietary capital, and rules prohibiting the operator from engaging in matched principal trading.

### 12. RULES APPLICABLE TO OTF OPERATORS

- (1) An OTF Operator may engage in matched principal trading in Qualified Investments only if the Member has consented to the process.
- (2) An OTF Operator must not use matched principal trading to execute Member orders in an OTF in Qualified Investments pertaining to a class of derivatives that has been declared, by the AFSA, subject to the clearing obligation.
- (3) OTF Operators may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.
- (4) OTF Operators may engage another Authorised Firm to carry out market making on that OTF on an independent basis, provided that such other Authorised Firm does not have close links with the OTF Operator.
- (5) Execution of orders on an OTF must be carried out on a discretionary basis.
- (6) An OTF Operator must exercise discretion only in the following circumstances:
  - (a) when deciding to place or retract an order on the OTF they operate; or
  - (b) when deciding not to match a specific Member order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a Member and with its “best execution” obligations.
- (7) For the purpose of MOTF 12(6), the “best execution” obligation means when an OTF Operator agrees, or decides in the exercise of its discretion, to execute any transaction with or for a client in a Qualified Investment, it must provide best execution, namely to take reasonable care to determine the best execution available for that Qualified Investment under the prevailing market conditions and deals at a price and other conditions which are no less advantageous to that client.
- (8) With a system that crosses Member orders, the OTF Operator may decide if, when and how much of two or more orders it wants to match within the system. With regard to a system that arranges transactions in non-equities, the OTF Operator may facilitate negotiation between Members so as to bring together two or more potentially compatible trading interests in a transaction.
- (9) OTF Operators must, on request, provide the AFSA with a detailed explanation why the system does not correspond to and cannot operate as a MTF, a detailed description as to how discretion is exercised, in particular when an order to the OTF may be retracted and when and how two or more Member orders are matched within the OTF. In addition, the OTF

Operator must provide the AFSA with information explaining its use of matched principal trading.

## **12-1. RULES APPLICABLE TO AUTHORISED FIRMS OPERATING A FACILITY FOR QUALIFIED INVESTMENT TOKENS**

### **Guidance**

Operating a facility for Qualified Investment Tokens is defined in GLO as Operating a Multilateral Trading Facility or Operating an Organised Trading Facility on which Qualified Investment Tokens are traded.

### **12-1.1 Technology and governance requirements**

A Trading Facility Operator 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 Qualified Investment 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;
  - (iii) processes to ensure that the Trading Facility Operator 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 Qualified Investment 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 it uses.

### **Guidance**

- (1) To be fit for purpose, the technology design of the DLT application used by a Trading Facility Operator should be able to address how the rights and obligations relating to the Qualified Investment Tokens traded on that facility are properly managed and capable of being exercised or performed. For example, where a Qualified Investment 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, a Trading Facility Operator 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 'fork'), 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, which should be appropriately justified, including to deal with a cyber or hacking attack, and how any resulting disruptions would be resolved.
- (3) Some parts of trading Qualified Investment Tokens, for example, order matching, may take place 'offchain' (i.e. not using DLT). In those circumstances, the operator should still maintain adequate control over Persons who are undertaking those activities, as they are agents or delegates of the operator.

### 12-1.2. Safe custody of Qualified Investment Tokens

A Trading Facility Operator must ensure that:

- (1) Where its safe custody arrangements involve acting as a Digital wallet Service Provider, it complies with the following requirements for Authorised Firms Providing Custody for Qualified Investment Tokens:
  - (a) a Digital wallet Service Provider must ensure that:
    - (i) any DLT application it uses in Providing Custody for Qualified Investment Tokens is resilient, reliable and compatible with any relevant facility on which those Qualified Investment Tokens are traded or cleared;
    - (ii) it has the ability to clearly identify and segregate Qualified Investment 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 Qualified Investment Tokens, must ensure that:
  - (i) the architecture of any Digital wallet 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 Qualified Investment 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 Qualified Investment 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 Qualified Investment 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.

### 12-1.3. Provision of key features document

An Authorised Firm must not provide a Financial Service to which this Chapter applies to a Person unless it has provided that Person with a key features document containing the information in COB 4.6.

### 12-1.4. Technology audit reports

A Trading Facility Operator must:

- (a) appoint a suitably qualified and independent third party professional to:
  - (i) carry out an annual audit of the Trading Facility Operator's compliance with the technology resources and governance requirements that apply to it;
  - (ii) produce a written report which sets out the methodology and results of that annual audit;
  - (iii) confirm whether the requirements referred to in (i) have been met; and
  - (iv) list 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 Trading Facility Operator'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 Trading Facility Operator to satisfy itself of that fact.

### **Guidance**

Where a Trading Facility Operator appoints a third party professional for the purposes of (a)(i) and (ii), the Trading Facility Operator 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.

## **13. TRADE PROCESSING AND FINALISATION OF TRANSACTIONS**

- (1) A Trading Facility Operator must establish days and hours it is open for business under normal market conditions.
- (2) A Trading Facility Operator must establish rules for a participant to submit instructions to a MTF or OTF.

## **14. TRANSACTION RECORDING**

- (1) A Trading Facility Operator must ensure that satisfactory arrangements are made for recording transactions effected on and through its facilities.
- (2) In determining whether a Trading Facility Operator has satisfactory arrangements for recording the transactions effected on and through its facilities, the AFSA may have regard to:
  - (a) whether the Operator has 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 Qualified Investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;

- (ii) the identities and, if appropriate, the roles of the counterparties to the transaction;
- (iii) if the Operator's rules make provision for transactions to be effected, cleared or to be cleared 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 or to be cleared; and
- (iv) the date and manner of settlement of the transaction.

## 15. SAFEKEEPING OF CLIENT ASSETS

- (1) A Trading Facility Operator must not hold any financial instruments or other assets belonging to users of its MTF or OTF with respect to its operation of the MTF or OTF.
- (2) Notwithstanding MOTF 15(1), a Trading Facility Operator may hold financial instruments or other assets belonging to its customers with respect to the Regulated Activities other than the operation of the MTF or OTF for which it is granted an authorisation.

## 16. OPERATIONAL SYSTEMS AND CONTROLS

- (1) A Trading Facility Operator must establish a robust operational risk management framework with appropriate systems and controls to identify, monitor and manage operational risks that key Members, other Recognised Non-AIFC Market Institutions, service providers (including outsources) and utility providers might pose to itself.
- (2) A Trading Facility Operator must have a business continuity plan, which is subjected to periodic review and scenario testing, that addresses events posing a significant risk of disrupting operations, including events that could cause a widespread or major disruption. The plan must:
  - (a) outline objectives, policies, procedures and responsibilities to deal with internal and external business disruptions and measures to ensure timely resumption of service levels;
  - (b) include policies and procedures for event and crisis management;
  - (c) incorporate the use of a secondary site;
  - (d) contain appropriate emergency rules for force majeure events;
  - (e) be designed to ensure that critical information technology systems can resume operations within two hours following disruptive events; and
  - (f) outline business continuity procedures in respect of its Members and other users of its facilities following disruptive or force majeure events.
- (3) A Trading Facility Operator must have an incident management procedure to record, report, analyse and resolve all operational incidents.
- (4) A Trading Facility Operator must have clearly defined operational reliability objectives and policies to achieve those objectives, as well as a scalable operational capacity adequate to handle increasing stress volumes, service-level objectives and historical data.
- (5) A Trading Facility Operator must have a comprehensive physical and information security policy, standards, practices and controls to identify, assess and manage security threats and vulnerabilities and to protect data from loss and leakage, unauthorised access and other processing risks.



- (6) Upon request from the AFSA, an Operator must provide the documents listed in MOTF 16(2) to (5) in a timely manner.

## **17. DEFAULT MANAGEMENT**

### **17.1. Default Rules**

A Trading Facility Operator must have legally enforceable Default Rules which, in the event of a Member of the Operator being or appearing to be unable to meet its obligations in respect of one or more contracts, enable it:

- (1) to suspend or terminate such Member's membership; and
- (2) to share information with its clearing house.

### **17.2. Public notice of suspended or terminated Membership**

A Trading Facility Operator must issue a public notice on its website in respect of a Member whose membership is suspended or terminated.

### **17.3. Cooperation with office-holder**

A Trading Facility Operator must be able and willing to cooperate, by the sharing of information and otherwise, with the AFSA, a relevant office-holder and any other authority or body having responsibility for a matter arising out of, or connected with, the default of a Member of the Operator or the default of a clearing house or another Operator.

## **18. FINANCIAL CRIME AND MARKET ABUSE**

- (1) A Trading Facility Operator must:
  - (a) operate an effective market surveillance program and appropriate measures to identify, monitor, deter and prevent conduct which may amount to market misconduct, Financial Crime and money laundering on and through the Operator's facilities; and
  - (b) immediately report to the AFSA any suspected market misconduct, Financial Crime or money laundering, along with full details of that information in writing.
- (2) A Trading Facility Operator must have appropriate procedures and protections for enabling Employees to disclose any information to the AFSA or to other appropriate bodies involved in the prevention of market misconduct, money laundering or other Financial Crime or any other breaches of relevant legislation.
- (3) In determining whether a Trading Facility Operator's measures are appropriate to reduce the extent to which its facilities can be used for a purpose connected with Market Abuse or Financial Crime, to facilitate their detection and to monitor their incidence, the AFSA may have regard to:
  - (a) whether the rules of the Operator enable it to disclose any information to the AFSA or other appropriate bodies involved in the detection, prevention or pursuit of Market Abuse or Financial Crime inside or outside AIFC; and
  - (b) whether the arrangements, resources, systems, and procedures of the Operator enable it to:
    - (i) monitor the use made of its facilities so as to obtain information regarding possible patterns of normal, abnormal or improper use of those facilities;

- (ii) detect possible instances of Market Abuse or Financial Crime, for example, by detecting suspicious patterns in the use of its facilities;
- (iii) communicate information about Market Abuse or Financial Crime promptly and accurately to appropriate bodies; and
- (iv) cooperate with all relevant bodies in the prevention, investigation and pursuit of Market Abuse or Financial Crime.

## 19. RESOLUTION PLANNING

If a Trading Facility Operator anticipates that it or the MTF or OTF may be the subject of an insolvency order, it must act in a manner that reduces the impact on other market participants and may seek advice from external advisers.

## 20. SETTLEMENT AND CLEARING SERVICES

### 20.1. Settlement and clearing facilitation services

- (1) A Trading Facility Operator, when engaging a clearing service, 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 MTF or OTF (being rights and liabilities in relation to those transactions).
- (2) The engagement of a Recognised Non-AIFC Clearing House is deemed sufficient to satisfy MOTF 20.1(1)(1).
- (3) If a Trading Facility Operator engages a party that is not a Recognised Non-AIFC Clearing House, the Operator must confirm to the AFSA, in writing, that satisfactory arrangements have been made under MOTF 20.1(1)(1).
- (4) In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions as required by MOTF 20.1(1)(1), the AFSA may have regard to the clearing house's:
  - (a) rules and practices relating to clearing and settlement including its arrangements with another Person for the provision of clearing and settlement services;
  - (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
  - (c) if relevant, arrangements for making deliveries and payments, in all relevant jurisdictions;
  - (d) procedures to detect and deal with the failure of a Member to settle in accordance with its rules;
  - (e) arrangements for taking action to settle a trade if a Member does not settle in accordance with its rules;
  - (f) arrangements for monitoring its Members' settlement performance; and
  - (g) if appropriate, default rules and default procedures.
- (5) The rules of the Trading Facility Operator must permit a Member to use whatever settlement facility the Member chooses for a transaction. This paragraph only applies if:

- (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and
- (b) the Operator is satisfied that the smooth and orderly functioning of the AIFC financial markets will be maintained.

## SCHEDULE 1: CONTRACT DELIVERY SPECIFICATIONS

### 1. Application

This Schedule applies to a Trading Facility Operator 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

A Trading Facility Operator must, for the purposes of meeting the requirement in MOTF 5.2(4)(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, a Trading Facility Operator 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

A Trading Facility Operator 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 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

A Trading Facility Operator 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.

A Trading Facility Operator 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

A Trading Facility Operator 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 will occur.

## Guidance

A Trading Facility Operator, 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.