



qatar

FINANCIAL CENTRE

REGULATORY AUTHORITY

Assets Rulebook (ASET)

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Background to this Rulebook

1. The *Regulatory Authority* considers that the proper safeguarding of money and other assets belonging to *Clients* is essential to the pursuit of its *Objectives* of maintaining the financial stability of the *QFC*, the promotion and maintenance of market confidence in, and the international reputation of, the *QFC* and promoting and maintaining efficient and transparent markets.
2. This rulebook sets out the requirements applicable to *Authorised Firms* in relation to the proper safeguarding of money and other assets belonging to *Clients*.
3. Failure by an *Authorised Firm* to comply adequately with this rulebook is likely to impact on the *Regulatory Authority's* assessment of that *Authorised Firm's Fitness and Propriety*.

1 Application and General Provisions

1.1 Application

- 1.1.1** (1) Chapters 1 and 6 apply to all *Authorised Firms*.
- (2) Chapters 2 to 5 (client money protection rules) apply to an *Authorised Firm* conducting *Investment Business* in or from the QFC other than in relation to *Insurance Mediation Business*.
- (3) Chapter 7 (insurance money protection rules) applies to an *Authorised Firm* conducting *Insurance Mediation Business* in the QFC, except where Rule 7.1.2 applies.

1.2 General Provisions

- 1.2.1** When a *Rule* in this rulebook requires information to be sent to a *Customer*, an *Authorised Firm* must provide that information directly to the *Customer* and not to another *Person*, unless the *Authorised Firm* has a written instruction from the *Customer* requiring or permitting the *Authorised Firm* to provide the relevant information to that other *Person*, so long as the recipient is not connected with the *Authorised Firm*.
- 1.2.2** When a *Rule* in this rulebook is expressed to apply to an *Authorised Firm* only to the extent that such *Authorised Firm* acts with knowledge, the *Authorised Firm* will not be taken to act with knowledge for the purposes of that *Rule* if none of the relevant individuals involved on behalf of the *Authorised Firm* acts with knowledge as a result of a *Chinese Wall* arrangement established under COND, Rule 2.5.1 (3).

2 Client Money

2.1 Application

2.1.1 This chapter applies to every *Authorised Firm* that holds *Client Money*.

2.1.2 For the purposes of Rule 2.1.1, *Client Money* is held by an *Authorised Firm* if it is:

- (A) directly held by the *Authorised Firm*;
- (B) held in an account in the name of the *Authorised Firm*; or
- (C) held by a *Person*, or in an account in the name of a *Person*, controlled by the *Authorised Firm*.

2.2 Definition of Client Money

2.2.1 All money held or received by an *Authorised Firm* from or on behalf of a *Client* in the course of, or in connection with, the carrying on of *Investment Business* in or from the *QFC* is *Client Money*, except:

- (A) where the *Authorised Firm* is a *Designated Bank* and such money is held in an account with that *Authorised Firm*, provided that the *Authorised Firm* has notified the *Client* in writing (which may include a notification in the *Authorised Firm's Terms of Business*) that money belonging to the *Client* will be held by the *Authorised Firm* as a bank and not as trustee and that such money will therefore not be subject to the *Client Money Protection Rules*;
- (B) where such money is held by the *Authorised Firm* in an account with itself in circumstances where all of the *Authorised Firm's* obligations to repay such money to the *Client* (or to its order) have been fully, unconditionally and irrevocably guaranteed by a *Designated Bank*, provided that the *Authorised Firm* has:
 - (i) notified the *Client* in writing (which may include a notification in the *Authorised Firm's Terms of Business*) that the *Authorised Firm's* obligations to repay money belonging to the *Client* have been guaranteed by a *Designated Bank* and that such money will therefore not be subject to the *Client Money Protection Rules*;
 - (ii) provided the *Client* with a copy of the guarantee from the *Designated Bank*; and
 - (iii) obtained a legal opinion from a reputable law firm in the jurisdiction in which the relevant *Designated Bank* is incorporated, confirming that the guarantee is legal, valid, binding and enforceable under the laws of that jurisdiction (including on the insolvency or winding-up of the *Authorised Firm*) and confirmed to the *Regulatory Authority* in writing that it has obtained such an opinion;

- (C) where such money that is immediately due and payable by the *Client* to the *Authorised Firm* for its own account;
- (D) where such money has been received from an *Associate* of the *Authorised Firm*, unless that *Associate* has confirmed to the *Authorised Firm*, in writing, that such money is held by it on behalf of a *Person* who is not part of the *Authorised Firm's Group*;
- (E) where such money has been received from a *Client* in the form of a cheque, or other payable order, made payable to a Regulated Financial Institution in connection with a transaction arranged or advised on by the *Authorised Firm*, provided that:
 - (i) the cheque or other payable order is not collected or paid within the *QFC*, and is forwarded by the *Authorised Firm* to the *Regulated Financial Institution* outside the *QFC* in accordance with the *Client's* instructions as soon as reasonably practicable, and in any event within two *Business Days* of the date of receipt from the *Client*; and
 - (ii) the *Authorised Firm* maintains a record detailing all cheques or payable orders received and forwarded as required by this rule (including details of the *Client*, *Regulated Financial Institution* and dates of receipt and forwarding involved) and a copy of all such cheques and other payable orders; and
- (F) money held from or on behalf of a *Client* to whom the *Client Money Protection Rules* do not apply pursuant to section 2.3.

Guidance

1. The exclusion in Rule 2.2.1 (E) operates to allow an *Authorised Firm* to receive a cheque from a *Client* in relation to a transaction which it has arranged or advised on and immediately forward it to the *Regulated Financial Institution* to which it is payable without the *Authorised Firm* having to treat that cheque as *Client Money*.
2. *Authorised Firms* are reminded that if they are subject to *GENE Rule 2.5.1*, they may not hold *Client Money* and such firms are expected to have systems and controls in place to avoid receiving such money. However, Rule 2.2.1 (E) does allow such *Authorised Firms* to receive and on-forward cheques and payable orders in certain limited circumstances.
3. *Rule 2.2.1 (E)* applies in circumstances where the *Authorised Firm* immediately forwards the cheque to a *Regulated Financial Institution* outside of the *QFC*. This includes the circumstance of an *Authorised Firm* which operates as a branch in the *QFC* forwarding the cheque to the head office or other office, or a related entity, of the *Authorised Firm* outside of the *QFC*.

2.2.2 The exclusions in Rules 2.2.1(A) and (B) do not apply to money which has been passed to a third party, that is money which is not, or ceases to be, recorded in an account with the *Authorised Firm* itself.

2.2.3 For the purposes of Rule 2.2.1(C), money which is immediately due and payable to an *Authorised Firm* for its own account includes money which is paid to the *Authorised Firm* (including by being deducted from *Client Money* held by the *Authorised Firm*) in settlement of:

- (A) brokerage, fees and other charges that are due and payable to the *Authorised Firm*;
- (B) amounts owed by the *Client* to the *Authorised Firm* in respect of any sums paid by the *Authorised Firm* in relation to a *Client* purchase or in settlement of a margin payment in advance of receiving a payment from the *Client*; or
- (C) amounts owed by the *Client* to the *Authorised Firm* in respect of unpaid purchases by or for the *Client*, if delivery of investments has been made to the *Client* or credited to his account.

2.2.4 For the purposes of this chapter, the expression 'money' includes any right, instruction or direction to pay or be paid money or money's worth.

2.3 Disapplication of the Client Money Protection Rules

2.3.1 The *Client Money Protection Rules* do not apply to money held by an *Authorised Firm* on behalf of a *Client* that is:

- (A) a *Business Customer* who has opted out of protections conferred by the *Client Money Protection Rules* in accordance with Rule 2.3.2; or
- (B) a *Market Counterparty*, unless the *Authorised Firm* has agreed to treat money held by or on behalf of that *Client* in accordance with the *Client Money Protection Rules*

provided that the *Authorised Firm* has notified the *Client* in writing (which may include a notification in the *Authorised Firm's Terms of Business*) that:

- (C) the *Client's* money will not be subject to the protections conferred by the *Client Money Protection Rules*;
- (D) as a consequence, the *Client's* money will not be segregated from the money of the *Authorised Firm*;
- (E) the *Client* will rank only as a general unsecured creditor of the *Authorised Firm* in relation to that money; and
- (F) in the case of a *Client* to whom the *Authorised Firm* proposes to provide discretionary investment management services, the *Client* should be aware that the *Authorised Firm* therefore has a significant degree of control over the amount of unsecured credit risk that the *Client* is taking on the *Authorised Firm* and that the *Client* should therefore consider this carefully before commencing business on this basis with the *Authorised Firm*.

2.3.2 A *Client* who is a *Business Customer* can opt out of the protections conferred by the *Client Money Protection Rules* by providing the *Authorised Firm* with a written acknowledgement of the notifications made to the *Client* by the *Authorised Firm* pursuant to Rules 2.3.1(C), (D), (E) and (F).

2.3.3 (1) Subject to (2), the *Client Money Protection Rules* do not apply to money received from a *Client* of the *Authorised Firm* in respect of a *DvP Transaction* through a commercial settlement system if it is intended that:

- (A) (i) in respect of a *Client* purchase, the money from the *Client* will be due to the *Authorised Firm* within one *Business Day* upon the fulfilment of a delivery obligation; or
 - (ii) in respect of a *Client* sale, the money will be due to the *Client* within one *Business Day* following the *Client's* fulfilment of a delivery obligation;
 - (B) the *Authorised Firm* has elected not to treat money from that *Client* as *Client Money*; and
 - (C) the *Authorised Firm* has notified the *Client* in writing (which may include a notification in the *Authorised Firm's Terms of Business*) of the disclosures in Rule 2.3.1(C) - (F).
- (2) Money in respect of which an election has been made in accordance with (1) must be treated as *Client Money* if the delivery or payment by the *Authorised Firm* does not occur within three *Business Days* following the date of the payment or delivery of the investments by the *Client*.

2.4 Creation of Trust over Client Money

2.4.1 All *Client Money* held by an *Authorised Firm* shall be subject to a trust (and the *Authorised Firm* shall be the trustee of that trust). Any *Client Money* held pursuant to that trust shall be held on the following terms:

- (A) for the purposes of and on the terms of the *Client Money Protection Rules* and the *Client Money Distribution Rules*;
- (B) subject to Rule 2.4.1(C), for the *Clients* for whom that money is held according to their respective interests in it;
- (C) on the failure of the *Authorised Firm*, for the payment of the costs properly attributable to the distribution of the *Client Money*, in accordance with Rule 2.4.1(B); and
- (D) after all valid claims and costs under Rules 2.4.1(B) and (C) have been met, for the *Authorised Firm* itself.

2.5 Payment of Client Money into Client Bank Accounts

2.5.1 A *Client Bank Account* is an account:

- (A) that is held with a *Designated Bank*;
- (B) that includes the words "Client Bank Account" in its title; and
- (C) in respect of which, the *Authorised Firm* has:

- (i) notified the relevant *Designated Bank* in writing that all money standing to the credit of the account is held by the *Authorised Firm* as trustee and that the *Designated Bank* is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the *Authorised Firm*; and
- (ii) requested the *Designated Bank* to provide it with a written acknowledgement of the matters set out in (i).

2.5.2 If a *Designated Bank* does not provide the acknowledgement required pursuant to Rule 2.5.1(C)(ii) within one calendar month after the *Authorised Firm's* dispatch of the notice, the *Authorised Firm* must cease to hold any *Client Money* with that *Designated Bank* unless the *Authorised Firm* is satisfied on reasonable grounds that the failure to obtain such an acknowledgement would not affect the recognition of the *Client's* beneficial entitlement to the money held in that *Client Bank Account* (under the trust constituted by Rule 2.4.1) under the laws of the jurisdiction in which the *Client Bank Account* is held (including on the insolvency or winding-up of the *Authorised Firm* or the *Designated Bank*).

- 2.5.3** (1) Where an *Authorised Firm* holds *Client Money* it must ensure, except where otherwise provided in section 2.5 or section 2.6, that the *Client Money* is paid into one or more *Client Bank Accounts* as soon as possible and in any event within one *Business Day* of receipt.
- (2) If the *Client Money* is received by an *Authorised Firm* in the form of an automated transfer, it must take reasonable steps to ensure that:
- (A) the money is received directly into a *Client Bank Account*; and
 - (B) if money is received directly into the *Authorised Firm's* own account, the money is transferred into a *Client Bank Account* within one *Business Day* of receipt.
- (3) If an *Authorised Firm* receives a mixed remittance (part *Client Money* and part other money), it must:
- (A) pay the full sum into a *Client Bank Account* in accordance with (1); and
 - (B) transfer out that part of the payment which is not *Client Money* within one *Business Day* of the day on which it would normally expect the remittance to be cleared (or, if such day is not a *Business Day* in the jurisdiction in which the account is held, on the next *Business Day* in that jurisdiction).
- (4) An *Authorised Firm* must take reasonable steps to ensure that it is notified promptly of any receipt of *Client Money* in the form of *Client* entitlements.

Guidance

Client entitlements are such things as dividends, coupons and other distributions with similar characteristics.

2.5.4 An *Authorised Firm* may segregate *Client Money* in a different currency from that of receipt, provided that it ensures that the amount held is adjusted each day to an amount

at least equal to the original currency amount (or the currency in which the *Authorised Firm* has its liability to its *Clients*, if different), translated at the previous day's closing spot exchange rate.

Guidance

1. Rule 2.5.4 is intended for those *Authorised Firms* where they receive money in a currency that they do not usually receive and for which they do not have a *Client Bank Account*. *Authorised Firms* should not view this *Rule* as an opportunity to speculate with *Client Money* on the currency markets.
2. *Authorised Firm's* are reminded of the obligation owed to *Retail Customers* under *COND*, chapter 4 to disclose in writing the basis or amount of its *Charges* for conducting *Investment Business*. This would include any costs or charges associated with holding or converting *Client Money* in a different currency from that of receipt that are not borne by the *Authorised Firm*.

2.5.5 An *Authorised Firm*:

- (A) may only pay, or permit to be paid, *Client Money* into a *Client Bank Account* where it has undertaken a prior assessment of the suitability of the relevant *Designated Bank* and concluded on reasonable grounds that the *Designated Bank* is suitable to hold that *Client Money* in a *Client Bank Account*; and
- (B) must have systems and controls in place to ensure that the *Designated Bank* remains suitable.

2.5.6 When assessing the suitability of a *Designated Bank*, an *Authorised Firm* must have regard to all relevant circumstances including, without limitation:

- (A) the bank's credit rating, capital and financial resources;
- (B) the amount of *Client Money* placed with the bank, as a proportion of the bank's capital and deposits;
- (C) the regulatory and insolvency regimes of the jurisdiction in which the bank is located;
- (D) the bank's reputation;
- (E) the bank's regulatory status and history; and
- (F) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the bank and other members of its *Group*.

2.5.7 The requirement for an *Authorised Firm* to pay *Client Money* into a *Client Bank Account* does not apply with respect to *Client Money*:

- (A) received in the form of cheque, or other payable order, until the *Authorised Firm* is in receipt of the proceeds of that cheque; or
- (B) temporarily held by an *Authorised Firm* before forwarding to a *Person* nominated by the *Client*.

2.5.8 An *Authorised Firm* must have procedures for identifying *Client Money* received by it and

for promptly recording the receipt of the money either in the books of account or a register for later posting to the *Client* cash book and ledger accounts. The procedures must cover *Client Money* received by the *Authorised Firm* through the mail, electronically or via agents of the *Authorised Firm* or through any other means.

2.6 Transfer of Client Money to Eligible Third Parties

2.6.1 Except as otherwise provided in this rulebook, an *Authorised Firm* may only pay, or permit to be paid, *Client Money* into an account with a *Person* who is not a *Designated Bank* if that *Person* is an *Eligible Third Party*.

2.6.2 An *Authorised Firm* may only pass, or permit to be passed, *Client Money* belonging to a *Client* to a *Third Party Account* if:

- (A) the *Client Money* is to be used in respect of a transaction or series of transactions for that *Client*; or
- (B) the *Client Money* is to be used to meet an obligation of that *Client*.

2.6.3 An *Authorised Firm* must not hold any excess *Client Money* in a *Third Party Account* longer than necessary to effect the relevant transactions or satisfy the relevant obligations.

2.6.4 An *Authorised Firm* may only pay, or permit to be paid, *Client Money* to a *Third Party Account* where:

- (A) the account includes the words “*Client Account*” in its title; and
- (B) the *Authorised Firm* has:
 - (i) notified the relevant *Eligible Third Party* in writing that all money standing to the credit of that account is held by the *Authorised Firm* as trustee and that the *Eligible Third Party* is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the *Authorised Firm*; and
 - (ii) requested the *Eligible Third Party* to provide it with a written acknowledgement of the matters set out in (i).

2.6.5 If an *Eligible Third Party* does not provide the acknowledgement required pursuant to Rule 2.6.4(B)(ii) within one calendar month after the *Authorised Firm's* dispatch of the notice, the *Authorised Firm* may continue to hold *Client Money* with that *Eligible Third Party*, provided that the *Authorised Firm*:

- (A) promptly provides notice in writing to any existing *Clients* to whom the *Authorised Firm* owes *Client Money* that the particular *Eligible Third Party* has not accepted that it has no right of set off or counterclaim against *Client Money*, in relation to sums owed to it by the *Authorised Firm*; and
- (B) ensures that any notifications that it sends thereafter pursuant to Rule 2.3.1 contain an additional notification that the particular *Eligible Third Party* has not

accepted that it has no right of set off or counterclaim against *Client Money*, in relation to sums owed to it by the *Authorised Firm*.

2.6.6 *An Authorised Firm:*

- (A) may only pay, or permit to be paid, *Client Money* to a *Third Party Account* where it has undertaken a prior assessment of the suitability of the relevant *Eligible Third Party* and concluded on reasonable grounds that the *Eligible Third Party* is suitable to hold that *Client Money*; and
- (B) must have systems and controls in place to ensure that the *Eligible Third Party* remains suitable.

2.6.7 When assessing the suitability of an *Eligible Third Party*, an *Authorised Firm* must have regard to all relevant circumstances including, without limitation:

- (A) the *Eligible Third Party's* credit rating, capital and financial resources;
- (B) the regulatory and insolvency regimes of the jurisdiction in which the *Eligible Third Party* is located;
- (C) the *Eligible Third Party's* reputation;
- (D) its regulatory status and history; and
- (E) the other members of the *Eligible Third Party's Group* and their activities.

2.7 Segregation of Client Money from the Authorised Firm's Own Money

2.7.1 Subject to Rule 2.7.2, an *Authorised Firm* must not deposit its own money into a *Client Bank Account* or a *Third Party Account*.

2.7.2 An *Authorised Firm* must not hold money other than *Client Money* in a *Client Bank Account* unless it is:

- (A) a minimum sum required to open the account or to keep it open;
- (B) money that is temporarily in the account in accordance with Rule 2.5.3(3) (mixed remittance);
- (C) interest credited to the account which exceeds the amount payable to *Clients* as interest and has not yet been withdrawn by the *Authorised Firm*, provided that the money is removed within one calendar month; or
- (D) it is to meet a shortfall in *Client Money* in accordance with Rule 2.11.4

2.7.3 If it is prudent to do so to ensure that *Client Money* is protected, an *Authorised Firm* may pay into a *Client Bank Account* money of its own, and that money will then become *Client Money* for the purposes of the *Client Money Protection Rules* and the *Client Money Distribution Rules*.

2.7.4 An *Authorised Firm* must maintain systems and controls for identifying money that is not permitted to be in a *Client Bank Account* or a *Third Party Account* and for transferring any such money which is in a *Client Bank Account* or a *Third Party Account* out of that account without delay.

2.8 Payment of Client Money from Client Bank Accounts

2.8.1 An *Authorised Firm* must have procedures for ensuring all withdrawals from a *Client Bank Account* are authorised.

2.8.2 Subject to Rule 2.8.3, *Client Money* held by an *Authorised Firm* must remain in a *Client Bank Account*, or *Third Party Account*, until it is:

- (A) due and payable to the *Authorised Firm*;
- (B) paid to the *Client* on whose behalf the *Client Money* is held;
- (C) paid in accordance with an instruction from the *Client* on whose behalf the *Client Money* is held;
- (D) required to meet the payment obligations of the *Client* on whose behalf the *Client Money* is held; or
- (E) paid out in circumstances that are otherwise authorised by the *Regulatory Authority*

whereupon it shall cease to be *Client Money* and the *Authorised Firm's* obligations as trustee in respect of such money shall cease.

2.8.3 Money paid out by way of cheque or other payable order under Rule 2.8.2 must remain in a *Client Bank Account* until the cheque or payable order is presented to the *Client's* bank and cleared by the paying agent.

2.9 Client Notifications

2.9.1 Before, or as soon as reasonably practicable after, an *Authorised Firm* receives *Client Money*, it must notify the *Client* on whose behalf the *Client Money* is held in writing (which may include a notification in the *Authorised Firm's Terms of Business*):

- (A) the basis and any terms governing the way in which the *Client Money* will be held;
- (B) that the *Client* is subject to the protection conferred by the *Client Money Protection Rules* and as a consequence:
 - (i) the *Client's* money will be held separately from money belonging to the *Authorised Firm*; and
 - (ii) in the event of the *Authorised Firm's* insolvency, winding-up or other

similar event, the *Client's* money will be subject to the *Client Money Distribution Rules*;

- (C) whether interest is payable to the *Client* and, if so, the terms and frequency of such payments;
- (D) that, notwithstanding that the *Client's* money will benefit from the protections conferred by the *Client Money Protection Rules*, the *Client* will still be taking unsecured credit risk on any bank or third party with whom the *Authorised Firm* places the *Client Money* that it holds;
- (E) if applicable, that *Client Money* may be held in a jurisdiction outside the QFC and that the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the QFC;
- (F) if the *Authorised Firm* is a *Non-Local Firm* (operates in the QFC via a branch), that the *Client* will not benefit from a priority ranking against other creditors of the *Authorised Firm* (to whom the protections under the *Client Money Protection Rules* do not apply), in relation to money owed to the *Client* by the *Authorised Firm*, in the event that there is any shortfall in the amounts held by the *Authorised Firm* in its *Client Bank Accounts* and *Third Party Accounts* (and that the *Client* would benefit from such a priority ranking if the *Authorised Firm* was incorporated in the QFC);
- (G) if applicable, that the *Authorised Firm* holds or intends to hold the *Client Money* in a *Client Bank Account* with a *Designated Bank* or in a *Third Party Account* with an *Eligible Third Party* which is in the same *Group* as the *Authorised Firm* and the identity of the *Designated Bank* or *Eligible Third Party* concerned;
- (H) if applicable, details about how any *Client Money* arising out of *Islamic Financial Business* are to be held; and
- (I) details of any claims or set offs which the *Authorised Firm* may have on *Client Money* held on behalf of the *Client* in satisfaction of a default by the *Client* or otherwise, and any rights which the *Authorised Firm* may have to close out or liquidate contracts or positions in respect of any of the *Client's* investments without the *Client's* prior instruction or consent.

Guidance

1. In outlining its terms of payment of interest under Rule 2.9.1(C) an *Authorised Firm* need not disclose the actual rates prevailing at any particular time however it should disclose the terms, for example, QCB Rate (Qatar Central Bank Rate) plus or minus 'x' basis points.
2. In relation to Rule 2.9.1(C) (interest payable), *Authorised Firms* are reminded of the obligations owed to *Retail Customers* under *COND*, part 4.2 to disclose the nature or amount of any income receivable by it or, to its knowledge, by its *Associate* and attributable to that business. This would include any interest received by the *Authorised Firm* that is not payable to its *Retail Customers*.

2.10 Client Reporting

2.10.1 An *Authorised Firm* must send a statement to the *Client* at least once a month or at such other intervals as are agreed in writing with the *Client*.

2.10.2 The statement must include:

- (A) the *Client's* total *Client Money* balances held by the *Authorised Firm* reported in the currency in which the *Client Money* is held, or the relevant exchange rate if not reported in the currency in which the money is held;
- (B) the amount, date, value and description of each credit and debit paid into and out of the account since the previous statement; and
- (C) any interest earned and charged on the *Client Money* since the previous statement.

2.10.3 The statement sent to the *Client* must be prepared within one calendar month of the statement date.

2.10.4 (1) Subject to (2), an *Authorised Firm* may, with the *Client's* prior written agreement, retain statements required to be sent to a *Client* who is ordinarily resident outside the *State*.

- (2) Statements retained in accordance with (1) must be held by an individual approved by the *Regulatory Authority* to carry out the *Authorised Firm's* *Compliance Oversight Function*.

2.11 Reconciliation

2.11.1 An *Authorised Firm* must maintain a system to ensure that accurate reconciliations of the *Client Bank Accounts* and *Third Party Accounts* in which *Client Money* is held are carried out, as frequently as necessary to ensure the accuracy of its records, and no less than once as at the close of the last *Business Day* of each calendar month.

2.11.2 The reconciliation in Rule 2.11.1 must include:

- (A) a full list of individual *Client* credit ledger balances, as recorded by the *Authorised Firm*;
- (B) a full list of individual *Client* debit ledger balances, as recorded by the *Authorised Firm*;
- (C) a full list of unpresented cheques and outstanding lodgements;
- (D) a full list of *Client Bank Account* and *Third Party Account* balances, as recorded in the *Authorised Firm's* accounting records; and
- (E) formal statements from *Designated Banks* and *Eligible Third Parties* showing account balances as at the date of reconciliation.

Guidance

In order that an *Authorised Firm* may check that it has sufficient *Client Money* segregated in its *Client Bank Account* (and held by third parties) to meet its obligations to *Clients* it is required periodically to check the amount which should be segregated and to compare this with the amount actually segregated. This check is, in the first instance, based upon the *Authorised Firm's* accounting records and is followed by a

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reconciliation with its banking records and records of third parties. An *Authorised Firm* is required to make a payment into the *Client Bank Account* if there is a shortfall or to remove any money which is not required to meet the *Authorised Firm's* obligations.

2.11.3 An *Authorised Firm* must:

- (A) reconcile the individual credit ledger balances, *Client Bank Account* and *Third Party Account* balances and the balances on the relevant *Designated Bank* and *Eligible Third Party* statement;
- (B) check that the balance in the *Client Bank Accounts* and *Third Party Accounts* as at the close of business on the previous day was at least equal to the aggregate balance of individual credit ledger balances as at the close of business on the previous day; and
- (C) ensure that all shortfalls, excess balances and unresolved differences, other than differences arising solely as a result of timing differences between the accounting systems of the *Designated Bank* or *Eligible Third Party* and the *Authorised Firm*, are investigated and, where applicable, corrective action taken as soon as is practicable.

2.11.4 An *Authorised Firm* must ensure that where the amount by which the *Client Money* in a *Client Bank Account* is insufficient to satisfy the claims of *Clients* in respect of that money, or not immediately available to satisfy such claims, any shortfall is paid from the *Authorised Firm's* own money into the *Client Bank Account* by the close of business on the day the shortfall is identified.

2.11.5 An *Authorised Firm* must perform the reconciliations required pursuant to Rule 2.11.3 within ten *Business Days* of the date to which the reconciliation relates.

2.11.6 When performing the reconciliations required pursuant to Rule 2.11.3, an *Authorised Firm* must:

- (A) include in the credit ledger balances:
 - (i) unallocated *Client Money*, suspense and error accounts;
 - (ii) dividends received and interest earned and allocated;
 - (iii) sale proceeds which have been received by the *Authorised Firm* where the *Client* has delivered the investments or the *Authorised Firm* holds or controls the investment; and
 - (iv) money paid by the *Client* in respect of a purchase where the *Authorised Firm* has not remitted the money to the counterparty or delivered the Investment to the *Client*; and
- (B) deduct from the credit ledger balances:
 - (i) money owed by the *Client* in respect of unpaid purchases by or for the *Client* if delivery of those investments has been made to the *Client*; and
 - (ii) money remitted to the *Client* in respect of sales transactions by or for the *Client* if the *Client* has not delivered the investments.

2.11.7 An *Authorised Firm* must maintain a clear separation of duties to ensure that *Employees* with responsibility for operating *Client Bank Accounts* or *Third Party Accounts* or that have authority to make payments, do not perform the reconciliations required pursuant to Rule 2.11.3.

2.11.8 (1) Each reconciliation performed in accordance with Rule 2.11.3 must be reviewed by an *Employee* of the *Authorised Firm* with adequate seniority.

(2) The *Employee* referred to in (1) must state in writing whether the reconciliation has been undertaken in accordance with the requirements in this rulebook and provide a written statement to that effect.

2.11.9 The *Authorised Firm* must notify the *Regulatory Authority* immediately where there has been a material discrepancy with the reconciliation which has not been rectified within one *Business Day* following the day on which that discrepancy was identified.

Guidance

A material discrepancy includes discrepancies which have the cumulative effect of being material, such as long standing discrepancies.

2.12 Auditor's Reports

2.12.1 An *Authorised Firm* that holds *Client Money* must arrange for its auditors to prepare a report and submit it to the *Regulatory Authority* in accordance with GENE section 9.5.

2.13 Record Keeping

2.13.1 An *Authorised Firm* must maintain records:

- (A) which enable the *Authorised Firm* to demonstrate to its auditors and the *Regulatory Authority* its compliance with the requirements set out in this chapter; and
- (B) which enable the *Authorised Firm* to demonstrate and explain all entries of money held in accordance with this chapter.

2.13.2 An *Authorised Firm* must maintain proper books and accounts based on the double-entry booking principle. They must be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction to which this rulebook applies. Entries must be made in chronological order and the current balance must be shown on each of the *Authorised Firm's* ledgers.

2.13.3 (1) An *Authorised Firm* must maintain a master list of all of its *Client Bank Accounts* and *Third Party Accounts*. The master list must detail:

- (A) the name of the account;
- (B) the account number;
- (C) the location of the account;

- (D) whether the account is currently open or closed; and
 - (E) the date of opening and if applicable, closure.
- (2) The details of a *Client Bank Account* or *Third Party Account* must be documented and maintained in the master list for at least six years following the closure of the relevant *Client Bank Account* or *Third Party Account*.

2.13.4 An *Authorised Firm* must maintain adequate records of all cheques and payment orders received in accordance with Rule 2.5.7(A) including, in respect of each payment, the:

- (A) date of receipt;
- (B) name of the *Client* for whom payment is to be credited; and
- (C) date when the cheque or payment order was presented to the *Authorised Firm's Designated Bank*.

2.13.5 Except as otherwise stated, all records maintained by an *Authorised Firm* pursuant to this chapter must be kept for at least six years.

3 Client Money Distribution Rules

3.1 Application

3.1.1 This chapter applies to every *Authorised Firm* that holds *Client Money*.

3.2 Firm-Related Distribution Event

3.2.1 Following the occurrence of a *Firm-Related Distribution Event* in relation to an *Authorised Firm*, that *Authorised Firm* must distribute *Client Money* in the following order of priorities (subject to the deduction of any fees payable to the insolvency practitioner or other similar official that has responsibility for distributing such *Client Money*):

- (A) first, all *Client Money* held in any *Client Bank Account* or a *Third Party Account*, shall be pooled and distributed among the *Authorised Firm's Clients* on a proportionate basis in accordance with the value of their respective valid claims against the *Authorised Firm* in respect of money owed to them by the *Authorised Firm* that is *Client Money*; and
- (B) secondly, upon satisfaction of all claims in (A):
 - (i) if a liquidator, receiver, administrator, or trustee in bankruptcy has been appointed over the *Authorised Firm*, the surplus shall be distributed in accordance with applicable insolvency or bankruptcy laws; or
 - (ii) in all other cases, the surplus shall be distributed in accordance with the direction of the *Regulatory Authority*.

3.2.2 Following the occurrence of a *Firm-Related Distribution Event* in relation to a *Local Firm*, if the amount of *Client Money* held in the *Authorised Firm's Client Bank Accounts* and *Third Party Accounts* is insufficient to satisfy the valid claims against the *Authorised Firm* of any *Clients* in respect of money owed to them by the *Authorised Firm* that is *Client Money*, all other assets beneficially owned by the *Authorised Firm* shall be used to satisfy any outstanding amounts remaining payable to such *Clients* in respect of those claims that have not been satisfied from the application of Rule 3.2.1(A) in priority to all of the *Authorised Firm's* other creditors other than those that have a prior ranking security interest in such assets.

3.2.3 To the extent that the above requirements are inconsistent with the *Insolvency Regulations*, the above requirements will prevail.

3.3 Third Party-Related Distribution Event

- 3.3.1** (1) When *Client Money* is held by an *Authorised Firm* in a *Client Bank Account* with a *Designated Bank* or a *Third Party Account* with an *Eligible Third Party*, the *Authorised Firm* continues to owe fiduciary duties to the *Client* by virtue of the trust constituted under section 2.4. However, an *Authorised Firm* will not be held responsible for a shortfall in *Client Money* arising as a result of or in connection with a *Third Party-Related Distribution Event*, provided that the *Authorised Firm* has complied with its fiduciary duties, including its duty to exercise proper care and skill in:
- (A) the selection of the *Designated Bank* or *Eligible Third Party*; and
 - (B) its subsequent monitoring of that *Designated Bank* or *Eligible Third Party*.
- (2) Subject to compliance with these fiduciary duties, the *Authorised Firm* is therefore not required to make good any such shortfall (although it may, of course, choose to do so in the interests of its relationship with the relevant *Clients*).
- 3.3.2** Following the occurrence of a *Third Party-Related Distribution Event* in relation to a *Designated Bank* or *Eligible Third Party*:
- (A) unless the *Authorised Firm* chooses to make good shortfalls in the *Client Money* balances held (or which should have been held) in the *Client Bank Accounts* or *Third Party Accounts* held by an *Authorised Firm* with the relevant *Designated Bank* or *Eligible Third Party*, such shortfalls shall be borne by *Clients* who have valid claims against the *Authorised Firm* in respect of money owed to them by the *Authorised Firm* that is *Client Money*, in proportion to the respective value of their claims;
 - (B) the *Authorised Firm* must, as soon as is practicable, make and retain a record of each such *Client's* share of the shortfall and must promptly notify the amount of the shortfall to the affected *Clients* (except where the *Authorised Firm* chooses to make good the shortfall); and
 - (C) *Client Money* received after the *Third Party-Related Distribution Event*:
 - (i) must not be transferred to the *Designated Bank* or *Eligible Third Party* which has suffered the *Third Party-Related Distribution Event* unless this is on the specific instructions of the *Client* (given after the occurrence of the *Third Party-Related Distribution Event*) in order to settle an obligation of that *Client* to that *Designated Bank* or *Eligible Third Party*; and
 - (ii) must, subject to (i), be placed in a separate *Client Bank Account* that has been opened with a different *Designated Bank* after the *Third Party-Related Distribution Event* has occurred.

4 Providing Custody Services

4.1 Application

- 4.1.1** (1) Subject to (2), (3) and (4), this chapter applies to an *Authorised Firm* that *Provides Custody Services* or *Arranges the Provision of Custody Services*.
- (2) This chapter does not apply when an *Authorised Firm* holds *Relevant Investments* under an arrangement of the type described in chapter 5.
- (3) Sections 4.4, 4.6 and 4.8 to 4.11 do not apply in relation to *Arranging the Provision of Custody Services*.
- (4) This chapter does not apply to an *Authorised Firm* when it safeguards and administers a *Relevant Investment* on behalf of an *Associate*, unless that *Associate* has confirmed to the *Authorised Firm*, in writing, that such investments are held by it on behalf of a *Person* who is not part of the *Authorised Firm's Group*.

4.1.2 A *Relevant Investment* need not be treated as a *Custody Investment* in respect of a *DvP Transaction* if it is intended that the *Relevant Investment* is either to be:

- (A) in respect of a *Client's* purchase, due to the *Client* within one *Business Day* following the *Client's* fulfilment of a payment obligation; or
- (B) in respect of a *Client's* sale, due to the *Authorised Firm* within one *Business Day* following the fulfilment of a payment obligation

unless the delivery or payment by the *Authorised Firm* does not occur by the close of business within three *Business Days* following the date of payment or delivery of the *Relevant Investment* by the *Client*.

4.1.3 Until a transaction of the type described in Rule 4.1.2 settles, an *Authorised Firm* may segregate money (in accordance with the *Client Money Protection Rules*) instead of the *Client's Custody Investment*.

4.1.4 An *Authorised Firm* need not treat a *Relevant Investment* as a *Custody Investment* when it temporarily holds a *Relevant Investment* on behalf of a *Client* and the *Authorised Firm*:

- (A) keeps it secure, records it as belonging to that *Client*, and forwards it to the *Client* or in accordance with the *Client's* instructions, as soon as practicable after receiving it;
- (B) retains the *Relevant Investment* for no longer than the *Authorised Firm* has taken reasonable steps to determine is necessary to check for errors and to receive the final documents in connection with any series of transactions to which the documents relate; and

- (C) makes a record, which must then be retained for at least six years after the record is made, of all the *Relevant Investments* handled in accordance with (A) and (B) together with the details of the *Clients* concerned and of any action the *Authorised Firm* has taken.

4.1.5 An *Authorised Firm* is responsible to its *Client* for any *Nominee* controlled by the *Authorised Firm* in respect of any requirements of this chapter.

4.2 Custody Investments

4.2.1 All *Relevant Investments* belonging to a *Client* in respect of which an *Authorised Firm* *Provides Custody Services* or *Arranges the Provision of Custody Services* in or from the *QFC* are *Custody Investments*.

4.3 Systems and Controls

4.3.1 An *Authorised Firm* which holds or controls *Custody Investments* must have systems and controls in place to:

- (A) ensure the proper safeguarding of such *Custody Investments*;
- (B) ensure that such *Custody Investments* are identifiable and secure at all times; and
- (C) be able to evidence compliance with the requirements of chapter 4 to its auditors and the *Regulatory Authority*.

4.3.2 *Custody Investments* are held or controlled by an *Authorised Firm* if they are:

- (A) directly held by the *Authorised Firm*;
- (B) held in an account in the name of the *Authorised Firm*; or
- (C) held by a *Person*, or in an account in the name of a *Person*, controlled by the *Authorised Firm*.

4.3.3 For the purposes of Rule 4.3.2:

- (A) a *Custody Investment* is held by a *Person* if the document of title relating to that *Custody Investment* is held in that *Person's* physical possession or if legal title to the *Custody Investment* is registered in that *Person's* name;
- (B) an account is controlled by a *Person* if that account is operated in accordance with the instructions of that *Person*; and
- (C) a *Person* is controlled by an *Authorised Firm* if that *Person* is inclined to act in accordance with the instructions of the *Authorised Firm*.

4.4 Recording, Registration and Holding Requirements

4.4.1 An *Authorised Firm* that *Provides Custody Services* must ensure that *Custody Investments* are recorded, registered and held in an appropriate manner to safeguard and control them.

4.4.2 Except as permitted in this rulebook or as required by applicable law, an *Authorised Firm* that *Provides Custody Services* must record, register and hold *Custody Investments* separately from its own assets.

4.4.3 To the extent practicable, an *Authorised Firm* must effect appropriate registration or recording of legal title to a *Custody Investment* in the name of:

- (A) the *Client*;
- (B) a *Nominee* controlled by the *Authorised Firm* provided that the *Client's* beneficial entitlement to that *Custody Investment* is properly recorded in the books and records of that *Nominee*;
- (C) a *Nominee* controlled by an *Eligible Custodian*;
- (D) an *Eligible Custodian* if:
 - (i) the *Custody Investment* is subject to the law or market practice of a jurisdiction outside the QFC and the *Authorised Firm* has taken reasonable steps to determine that it is in the *Client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
 - (ii) the *Authorised Firm* has notified the *Client* in writing;
- (E) the *Authorised Firm* if:
 - (i) the *Authorised Firm* has determined on reasonable grounds, having regard to the nature of the law and the market practice to which that *Custody Investment* is subject, that it is in the *Client's* best interests for the *Custody Investment* to be registered or recorded in the name of the *Authorised Firm* or that it is not feasible to do otherwise; and
 - (ii) the *Authorised Firm* has notified the *Client* in accordance with Rule 4.7.2(I) (notifications); or
- (F) any other *Person*, in accordance with the *Clients* specific written instruction, provided the *Authorised Firm* has notified the *Client* in accordance with Rule 4.7.2(J) (notifications).

4.4.4 An *Authorised Firm* may hold any document of title to a *Custody Investment* either in the physical possession of the *Authorised Firm* or with an *Eligible Custodian*, or in a *Nominee* controlled by an *Eligible Custodian*, in an account designated for *Clients' Custody Investments*.

4.5 Assessment of Eligible Custodians

4.5.1 An Authorised Firm:

- (A) may only hold a *Custody Investment* with an *Eligible Custodian* or *Arrange the Provision of Custody Services* through an *Eligible Custodian* where it has undertaken a prior assessment of the suitability of the relevant *Eligible Custodian* and concluded on reasonable grounds that the *Eligible Custodian* is suitable to hold those *Custody Investments*; and
- (B) must have systems and controls in place to ensure that the *Eligible Custodian* remains suitable.

4.5.2 When assessing the suitability of the *Eligible Custodian*, the *Authorised Firm* must ensure that the *Eligible Custodian* will provide protections equivalent to the protections conferred in chapter 4.

4.5.3 When assessing the suitability of an *Eligible Custodian*, an *Authorised Firm* must have regard to all relevant circumstances including, without limitation:

- (A) the expertise and market reputation of the *Eligible Custodian*;
- (B) on a continuing basis, the quality of services provided to the *Authorised Firm*;
- (C) the *Eligible Custodian* arrangements for holding and safeguarding *Custody Investments* and its use of agents and service providers
- (D) the *Eligible Custodian* credit rating, capital and financial resources;
- (E) the regulatory and insolvency regimes of the jurisdiction in which the *Eligible Custodian* is located;
- (F) the *Eligible Custodian's* regulatory status and history; and
- (G) the other members of the *Eligible Custodian's Group* and their activities.

4.5.4 Before an *Authorised Firm* that *Provides Custody Services* or *Arranges the Provision of Custody Services* permits *Custody Investments* to be held by an *Eligible Custodian* or *Nominee* controlled by an *Eligible Custodian*, it must have procured a written acknowledgement from the *Eligible Custodian* stating:

- (A) that the title of the account sufficiently distinguishes that account from any account containing assets beneficially belonging to the *Authorised Firm* or its *Nominee* and is in the form requested by the *Authorised Firm*;
- (B) that the *Custody Investments* will only be credited and withdrawn from the account in accordance with the instructions of the *Authorised Firm*;

- (C) that the *Eligible Custodian* will hold or record the *Custody Investments* separately from assets belonging to the *Eligible Custodian* and will procure that any sub-custodians used by it do the same;
- (D) that the *Eligible Custodian* will use due skill, care and diligence in the selection of any sub-custodian which it uses;
- (E) the arrangements for recording and registering the *Custody Investments*, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions;
- (F) that the *Eligible Custodian* will deliver a statement to the *Authorised Firm* (including the frequency of such statement), which details the description and amounts of *Custody Investments* in the account;
- (G) that the *Eligible Custodian* is not entitled to combine the account with any other account or to exercise any charge, mortgage, lien, right of set-off or counterclaim against *Custody Investments* in that account in respect of any sum owed to it on any other account of the *Authorised Firm* except in respect of any charges relating to the administration or safekeeping of the *Custody Investments* in that account; and
- (H) the extent of the *Eligible Custodian's* liability in the event of the loss of a *Custody Investment* caused by the fraud, wilful default or negligence of the *Eligible Custodian*, or an agent appointed by him.

4.6 Use of Custody Investments

4.6.1 Subject to Rule 4.6.2, an *Authorised Firm* which *Provides Custody Services* must not use a *Client's Custody Investment* for its own purpose or that of another *Person*.

4.6.2 An *Authorised Firm* may use a *Client's Custody Investments* for its own purpose or that of another *Person*, if it has systems and controls in place to ensure that:

- (A) it obtains that *Client's* prior written permission;
- (B) adequate records are maintained to protect *Custody Investments* which are applied as collateral or used for *Stock Lending* activities;
- (C) the equivalent assets can be returned to the *Client*; and
- (D) the *Client* is not disadvantaged by the use of his *Custody Investments*.

Guidance

Such permission does not need to be specific but may be a general permission given via the *Client's* acceptance of an appropriate statement (concerning the use of the *Client's Custody Investments*) in the *Authorised Firm's Terms of Business*.

4.6.3 If a *Custody Investment* belonging to a *Customer* is used for *Stock Lending* activity, the *Authorised Firm* must ensure that:

- (A) collateral in the form of money or *Readily Realisable Investments* is provided by the borrower in favour of the *Customer*;
- (B) the current realisable value of the *Custody Investment* and of the collateral is monitored daily; and
- (C) the *Authorised Firm* provides collateral in the form of money or *Readily Realisable Investments* to make up the difference where the current realisable value of the collateral falls below that of the *Custody Investment*, unless otherwise agreed in writing by the *Customer*.

4.7 Client Notifications

4.7.1 Before an *Authorised Firm* Arranges the Provision of *Custody Services* for a *Client* it must, if applicable, notify that *Client* in writing (which may include a notification in the *Authorised Firm's Terms of Business*) that the *Client's Custody Investments* may be held in a jurisdiction outside the *QFC* and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the *QFC*.

4.7.2 Before an *Authorised Firm* Provides *Custody Services* to a *Client* it must notify in writing the *Client* on whose behalf the *Custody Investments* will be held (which may include a notification in the *Authorised Firm's Terms of Business*):

- (A) of the arrangements for recording and registering *Custody Investments*, claiming and receiving dividends and other entitlements and interest and the giving and receiving of instructions relating to those *Custody Investments*;
- (B) of the obligations that the *Authorised Firm* will have to the *Client* in relation to exercising rights in respect of *Custody Investments* on behalf of the *Client*;
- (C) of the basis and any terms governing the way in which *Custody Investments* will be held, including any rights which the *Authorised Firm* may have to realise *Custody Investments* held on behalf of the *Client* on a default by the *Client*;
- (D) of the method and frequency upon which the *Authorised Firm* will report to the *Client* in relation to the *Client's Custody Investments*;
- (E) if applicable, that the *Authorised Firm* intends to mix *Custody Investments* with those of other *Clients* and, in respect of *Retail Customers*, that
 - (i) individual entitlements may not be identifiable by separate certificates, other physical documents or equivalent electronic record; and

- (ii) in the event of an unreconcilable shortfall after the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy of the custodian, *Clients* may share in that shortfall in proportion to their original share of the assets in the account
- (F) if applicable, that the *Client's Custody Investments* may be held in a jurisdiction outside the QFC and the market practices, insolvency and legal regime applicable in that jurisdiction may differ from the regime applicable in the QFC;
- (G) if applicable, that the *Authorised Firm* holds or intends to hold *Custody Investments* in an account with an *Eligible Custodian* which is in the same *Group* as the *Authorised Firm*;
- (H) the extent of the *Authorised Firm's* liability in the event of default by a *Nominee* controlled by the *Authorised Firm* or an *Eligible Custodian* and, in the case of a *Nominee* controlled by the *Authorised Firm*, the *Authorised Firm* shall not exclude liability for the negligence, wilful default or fraud of that *Nominee*;
- (I) if applicable, that legal title to the *Custody Investments* will be registered or recorded in the name of the *Authorised Firm* and, if the *Client* is a *Retail Customer*, obtained their written consent after having notified the *Client* that:
 - (i) the *Custody Investments* will or may be registered or recorded in the *Authorised Firm's* name;
 - (ii) as a result the *Custody Investments* may not be segregated from the investments of the *Authorised Firm*; and
 - (iii) in the event of the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy of the *Authorised Firm*, the *Client's* assets may not be as well protected from claims made on behalf of the general creditors of the *Authorised Firm*; and
- (J) if applicable, if a *Client* has instructed the *Authorised Firm* on the holding, registration or recording of a *Custody Investment* under Rule 4.4.3(F) (recording, registration and holding requirements), the *Authorised Firm* must notify the *Client* that the consequences of doing so are at the *Client's* own risk, unless the *Authorised Firm* has agreed otherwise.

4.8 Client Reporting

4.8.1 An *Authorised Firm* which *Provides Custody Services* to a *Client* must (at least every six months or at other intervals as agreed in writing with the *Client*) send to the *Client* a statement listing the *Client's Custody Investments* as at the date of reporting.

4.8.2 The statement sent to the *Client* pursuant to Rule 4.8.1 must be prepared and despatched to the *Client* within one calendar month of the date of reporting.

- 4.8.3** (1) Subject to (2), an *Authorised Firm* may, with the *Client's* prior written agreement, retain statements required to be sent to a *Client* who is ordinarily resident outside the *State*.
- (2) Statements retained in accordance with (1) must be held by an individual approved by the *Regulatory Authority* to carry out the *Authorised Firm's Compliance Oversight Function*.

4.9 Reconciliation

4.9.1 An *Authorised Firm* which *Provides Custody Services* must:

- (A) at least once each calendar month, reconcile its records of *Client Investments* held with *Eligible Custodians* with monthly statements received from those *Eligible Custodians*;
- (B) at least every six months, count all *Custody Investments* physically held by the *Authorised Firm*, or a *Nominee* controlled by the *Authorised Firm*, and reconcile the result of that count to the records of the *Authorised Firm*; and
- (C) at least every six months, reconcile between the *Authorised Firm's* record of individual *Client* holdings, and the *Authorised Firm's* record of the location of *Custody Investments*.

4.9.2 An *Authorised Firm* must perform the reconciliations required pursuant to Rule 4.9.1 within ten *Business Days* of the date to which the reconciliation relates.

4.9.3 An *Authorised Firm* must maintain a clear separation of duties to ensure that *Employees* with responsibility for the production or maintenance of the records to be reconciled do not perform the reconciliations required pursuant to Rule 4.9.1.

- 4.9.4** (1) Reconciliations performed in accordance with Rule 4.9.1 must be reviewed by an *Employee* of the *Authorised Firm* with adequate seniority.
- (2) The *Employee* referred to in (1) must state in writing whether the reconciliation has been undertaken in accordance with the requirements in this rulebook and provide a written statement to that effect.

4.9.5 An *Authorised Firm* must promptly correct any discrepancies which are revealed, and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the *Authorised Firm* is responsible.

4.9.6 The *Authorised Firm* must notify the *Regulatory Authority* immediately where there has been a material discrepancy with the reconciliation which has not been rectified by the end of the *Business Day* following the day on which that discrepancy was identified.

4.10 Auditor's Reports

4.10.1 An *Authorised Firm* that *Provides Custody Services* must arrange for its auditors to prepare a report and submit it to the *Regulatory Authority* in accordance with GENE section 9.5.

4.11 Record Keeping

4.11.1 An *Authorised Firm* must maintain records:

- (A) which enable the *Authorised Firm* to demonstrate to its auditors and the *Regulatory Authority* its compliance with the requirements set out in this chapter; and
- (B) which enable the *Authorised Firm* to demonstrate and explain all entries of *Custody Investments* held or controlled in accordance with this chapter.

4.11.2 (1) An *Authorised Firm* must maintain a master list of all accounts held with *Eligible Custodians*. The master list must detail:

- (A) the name of the account;
 - (B) the account number;
 - (C) the location of the account;
 - (D) whether the account is currently open or closed; and
 - (E) the date of opening and where applicable, closure.
- (2) The details of each account must be documented and maintained in the master list for at least six years following the closure of the relevant account.

4.11.3 An *Authorised Firm* must maintain records of all agreements with *Eligible Custodians* and any instructions given by the *Authorised Firm* to those *Eligible Custodians* under the terms of those agreements.

4.11.4 Except as otherwise stated, all records maintained by an *Authorised Firm* pursuant to this chapter must be kept for at least six years.

5 Collateral

5.1 Application

5.1.1 This chapter applies to an *Authorised Firm* when it receives or holds *Relevant Investments* for the purposes of securing the obligations of a *Client* to the *Authorised Firm* in the course of, or in connection with, the *Authorised Firm's* carrying on of *Investment Business* where either:

- (A) the *Client's* entire legal and beneficial interest in those *Relevant Investments* has been transferred to the *Authorised Firm*; or
- (B) the security arrangements grant to the *Authorised Firm* a right to use those *Relevant Investments* as if the *Client's* entire legal and beneficial interest in those *Relevant Investments* had been transferred to the *Authorised Firm*

in either case, subject to an obligation to return equivalent *Relevant Investments* to the *Client* upon satisfaction of the *Client's* obligations to the *Authorised Firm*.

5.1.2 If an *Authorised Firm* receives or holds *Relevant Investments* under an arrangement described in Rule 5.1.1(B) but has not yet exercised its *Right to Use* the *Relevant Investments*, then section 5.2 and 5.3 will not apply to those *Relevant Investments*. Instead, until such time as the *Authorised Firm* exercises its *Right to Use* such *Relevant Investments*, they will be *Custody Investments* and the *Authorised Firm* must comply with the requirements in chapter 4 in relation to them. Once the *Authorised Firm* has exercised its *Right to Use* such *Relevant Investments*, Rule 5.2.1 will apply to them.

5.1.3 This chapter does not apply when an *Authorised Firm's* interest in the *Relevant Investments* is only a bare security interest (without a *Right to Use*). In such circumstances, the *Relevant Investments* will be *Custody Investments* and the firm must comply with the requirements in chapter 4 in relation to them. For the purpose of this chapter, a security interest in a *Relevant Investment* will be a bare security interest if it gives the *Authorised Firm* the right to realise the *Relevant Investment* only on the *Client's* default and without a right to use that *Relevant Investment* other than on the *Client's* default.

5.2 Requirement to Maintain Adequate Records

5.2.1 An *Authorised Firm* that:

- (A) receives or holds *Relevant Investments* under an arrangement described in Rule 5.1.1; and
- (B) in the case of *Relevant Investments* held under an arrangement described in Rule 5.1.1(B) which has exercised its *Right to Use* those *Relevant Investments*, must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent *Relevant Investments* to the *Client*.

5.3 Client Reports

- 5.3.1** An *Authorised Firm* which holds *Relevant Investments* under an arrangement described in Rule 5.1.1 must (at least every six months or at other intervals as agreed in writing with the *Client*) send to the *Client* a statement listing those *Relevant Investments* and their market value as at the date of reporting.
- 5.3.2** The statement sent to the *Client* pursuant to Rule 5.3.1 must be prepared and despatched to the *Client* within one calendar month of the date of reporting.

6 Mandates over Client Accounts

6.1 Application

6.1.1 This chapter applies to an *Authorised Firm* that, in the course of or in connection with carrying on *Investment Business* or *Insurance Mediation Business*, has a *Mandate* or similar authority over an account in a *Clients* that the *Client* holds with a third party.

6.2 Systems and Controls in Relation to Mandates

6.2.1 Where an *Authorised Firm* holds one or more *Mandates*, it must establish appropriate systems and controls in relation to those *Mandates* which must include:

- (A) maintaining an up-to-date list of all such *Mandates* and any conditions imposed by the *Client* on the *Authorised Firm's* activities in relation to them;
- (B) recording, in an appropriate format, the details of the procedures and authorities for the giving and receiving of instructions under each *Mandate*;
- (C) taking all reasonable steps to ensure that any *Employees* who are, or are likely to be, required to give and receive instructions pursuant to a *Mandate* are fully aware of its terms including:
 - (i) the procedures and authorities for the giving and receiving of instructions under such *Mandate*; and
 - (ii) any conditions or restrictions imposed by the *Client* on the *Authorised Firm's* activities in relation to that *Mandate*; and
- (D) keeping a record of all transactions entered into pursuant to any *Mandate* and performing appropriate checks to ensure that those transactions are within the scope of the authority conferred by that *Mandate*.

7 Insurance Money

7.1 Application

7.1.1 (1) Subject to (2), this chapter applies to an *Authorised Firm* conducting *Insurance Mediation Business* in or from the QFC in relation to a *Non-Investment Insurance Contract*.

(2) This chapter does not apply:

(A) to an *Authorised Firm* to the extent that it elects to act in accordance with chapter 2 in accordance with Rule 7.1.2;

(B) in respect of business referred to in (1) if that business relates to *Reinsurance Contracts*; or

(C) to an *Insurer*.

7.1.2 An *Authorised Firm* that holds *Client Money* and money in respect of which this chapter applies, may elect to comply with the provisions of chapters 2 to 5 (the client money protection rules) in respect of all such money and if it does so all such money will be *Client Money*.

7.2 General

7.2.1 In this chapter, a customer of an *Insurance Manager* means:

(A) any insurer for which the *Insurance Manager* provides *Insurance Management*;

(B) any shareholder of an insurer mentioned in (A); or

(C) any *Person* on whose behalf the *Insurance Manager* undertakes to establish that *Person* as an insurer.

7.2.2 For the purposes of Rule 7.2.1:

(A) an insurer includes a *Cell* of a *Protected Cell Company* which is an *Insurer*; and

(B) a shareholder includes a holder of *Cell Shares*.

7.3 Insurance Money Segregation

7.3.1 Subject to Rule 7.3.12, an *Authorised Firm* must:

- (A) treat all money received from, or on behalf of, a *Client* (including a customer of an *Insurance Manager*) in respect of its *Insurance Mediation Business* as *Insurance Money*;
- (B) maintain one or more separate *Insurance Bank Accounts* with a *Designated Bank*;
- (C) ensure that each *Insurance Bank Account* contains in its title the name of the *Authorised Firm*, together with the designation *Insurance Bank Account* (or *IBA*);
- (D) prior to operating an *Insurance Bank Account*, give written notice to, and receive written confirmation from, the *Designated Bank* that the *Designated Bank* is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the *Authorised Firm*;
- (E) pay all *Insurance Money* directly and without delay into an *Insurance Bank Account*;
- (F) use an *Insurance Bank Account* only for the following purposes:
 - (i) the receipt of *Insurance Money*;
 - (ii) the receipt of such money as may be required to be paid into the *Insurance Bank Account* to ensure compliance by the *Authorised Firm* with any conditions or requirements prescribed by the *Regulatory Authority*;
 - (iii) the payment to *Clients* (including customers of an *Insurance Manager*) or to insurers of money due under *Insurance Mediation Business* transactions;
 - (iv) the payment of all money payable by the *Authorised Firm* in respect of the acquisition of or otherwise in connection with *Approved Assets*;
 - (v) the withdrawal of brokerage, management fees and other income related to *Insurance Mediation Business*, either in cash or by way of transfer to an account in the name of the *Authorised Firm* which is not an *Insurance Bank Account*, provided that no such sum may be withdrawn from the *Insurance Bank Account* before the time at which that amount may be brought into account as income of the *Authorised Firm*;
 - (vi) the withdrawal of money paid into the *Insurance Bank Account* in error; and
 - (vii) the withdrawal of any money credited to the *Insurance Bank Account* in excess of those required by any conditions and requirements prescribed by the *Regulatory Authority*;
- (G) ensure that any amount held in the *Insurance Bank Account* or other *Approved Assets*, together with any amount due and recoverable from insurance debtors, is equal to, or greater than the amount due to insurance creditors; and

- (H) take immediate steps to restore the required position if at any time it becomes aware of any deficiency in the required segregated amount.

Guidance

Examples of *Insurance Money* includes any of the following items arising from *Insurance Mediation Business*:

- a. premiums, additional premiums and return premiums of all kinds;
- b. claims and other money due under contracts of insurance;
- c. refunds and salvages;
- d. fees, charges, taxes and similar fiscal levies relating to contracts of insurance;
- e. discounts, commissions and brokerage; or
- f. money received from or on behalf of a customer of an *Insurance Manager*, in relation to his *Insurance Management* business.

7.3.2 An *Authorised Firm* may not obtain a loan or overdraft for any purpose relating to an *Insurance Bank Account* unless that advance:

- (A) is on a bank account which is designated as an *Insurance Bank Account*, and the loan or overdraft is used for payment to *Clients* (including customers of an *Insurance Manager*) or to insurers of money due under *Insurance Broking* transactions;
- (B) does not give rise to a breach of the requirements of Rule 7.3.1(F); and
- (C) is of a temporary nature and is repaid as soon as reasonably practicable.

7.3.3 An *Authorised Firm* must hold *Insurance Money* either in an *Insurance Bank Account* or in *Approved Assets*.

7.3.4 An *Authorised Firm* must ensure that *Approved Assets* are:

- (A) registered in the name of the *Authorised Firm* and designated '*Insurance Bank Account*'; or
- (B) held for the *Insurance Bank Account* of the *Authorised Firm* at the *Designated Bank* at which such *Insurance Bank Account* is held.

7.3.5 An *Authorised Firm* must ensure that money, other than interest, arising from *Approved Assets* or their realisation, sale or disposal is paid into an *Insurance Bank Account*.

7.3.6 An *Authorised Firm* may not hold *Insurance Money* in *Approved Assets* until it has given written notice to and received written notice from the *Designated Bank* referred to in Rule 7.3.4(B) that the bank is not entitled to any charge, encumbrance, lien, right of set-off, compensation or retention against *Approved Assets* held for the *Authorised Firm's Insurance Bank Account*.

7.3.7 An *Authorised Firm* may only use *Approved Assets* as security for a loan or overdraft where that loan or overdraft is for a purpose relating to an *Insurance Bank Account* as permitted by Rule 7.3.2.

7.3.8 Where *Insurance Money* is held in *Approved Assets* whose rating drops below the minimum stipulated within the definitions, that investment or asset will cease to be an *Approved Asset* and the *Authorised Firm* must dispose of the investment or asset as soon as possible and no later than within 20 *Business Days* of the rating change.

7.3.9 An *Authorised Firm* may not use derivatives in the management of *Insurance Money* except for the prudent management of foreign exchange risks.

7.3.10 An *Insurance Broker* who has a credit balance for a *Client* who cannot be traced should not take credit for such an amount except where:

- (A) he has taken reasonable steps to trace the *Client* and to inform him that he is entitled to the money;
- (B) at least six years has elapsed since the date the credit was initially notified to the *Client*; and
- (C) the provisions under Rule 7.3.1(G) will continue to be satisfied after the withdrawal of such money.

7.3.11 An *Insurance Broker* must keep records of all sums withdrawn from the *Insurance Bank Account* or realised *Approved Assets* as a result of credit taken under Rule 7.3.10 for at least six years from the date of withdrawal or realisation.

7.3.12 Rule 7.3.1 does not apply where there is a written agreement in place between the *Insurance Broker* and the insurer to whom the relevant money is to be paid (or from whom they have been received) under which the insurer agrees that:

- (A) the *Insurance Broker* holds all *Insurance Money* received by it in connection with *Contracts of Insurance* effected or to be effected by the insurer, as agent for the insurer;
- (B) insurance cover is maintained for the *Client* once *Insurance Money* is received by the *Insurance Broker*; and
- (C) the *Insurer's* obligation to make a payment to the *Client* is not discharged until actual receipt of the relevant payment by the *Client*.

7.4 Auditor's Reports

7.4.1 An *Authorised Firm* that holds *Insurance Money* must arrange for its auditors to prepare a report and submit it to the *Regulatory Authority* in accordance with GENE section 9.5.

7.5 Record Keeping

7.5.1 An *Authorised Firm* must maintain records:

- (A) which enable the *Authorised Firm* to demonstrate to its auditors and the *Regulatory Authority* its compliance with the requirements set out in this chapter; and
- (B) which enable the *Authorised Firm* to demonstrate and explain all entries of money held in accordance with this chapter.

7.5.2 An *Authorised Firm* must maintain proper books and accounts based on the double-entry booking principle. They must be legible, up to date and contain narratives with the entries which identify and provide adequate information about each transaction to which this rulebook applies. Entries must be made in chronological order and the current balance must be shown on each of the *Authorised Firm's* ledgers.

7.5.3 (1) An *Authorised Firm* must maintain a master list of all of its *Insurance Bank Accounts*. The master list must detail:

- (A) the name of the account;
 - (B) the account number;
 - (C) the location of the account;
 - (D) whether the account is currently open or closed; and
 - (E) the date of opening and if applicable, closure.
- (2) The details of a *Insurance Bank Account* must be documented and maintained in the master list for at least six years following the closure of the relevant *Insurance Bank Account*.

7.5.4 Except as otherwise stated, all records maintained by an *Authorised Firm* pursuant to this chapter must be kept for at least six years.

Endnotes

1 Abbreviation key

a	=	after	om	=	omitted/repealed
am	=	amended	orig	=	original
amdt	=	amendment	par	=	paragraph/subparagraph
app	=	appendix	prev	=	previously
art	=	article	pt	=	part
att	=	attachment	r	=	rule/subrule
b	=	before	renum	=	renumbered
ch	=	chapter	reloc	=	relocated
def	=	definition	s	=	section
div	=	division	sch	=	schedule
g	=	guidance	sdiv	=	subdivision
hdg	=	heading	sub	=	substituted
ins	=	inserted/added			

2 Rulebook history

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s 1.2 General Provisions

r 1.2.2 am RM2007/01

s 2.5 Payment of Client Money into Client Bank Accounts

r 2.5.4g am RM2007/01

s 2.9 Client Notification

r 2.9.1g am RM 2007/01