QATAR FINANCIAL CENTRE
REGULATORY AUTHORITY

Investment Management and Advisory Rules 2014

QFCRA Rules 2014–4

The Board of the Qatar Financial Centre Regulatory Authority makes the following rules, and gives the following guidance, under the *Financial Services Regulations*.

Dated 7 December 2014.

Abdulla Saoud Al-Thani
Chairman

VZ

QATAR FINANCIAL CENTRE
REGULATORY AUTHORITY

Investment Management and Advisory Rules 2014

QFCRA Rules 2014–4

made under the
Financial Services Regulations

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Chapter 1 General

1.1.1 Introduction

(1) These rules are the *Investment Management and Advisory Rules 2014* (or INMA).

(2) These rules establish the prudential framework, and the framework for client money and asset protection, for authorised firms to which, under rule 1.1.4, these rules apply. Such an authorised firm is called an ***INMA firm*** in these rules.

1.1.2 Commencement

These rules commence on 1 January 2015.

1.1.3 Effect of definitions, notes and examples

(1) A definition in the glossary to these rules also applies to any instructions or document made under these rules.

(2) A note in or to these rules is explanatory and is not part of these rules. However, examples and guidance are part of these rules.

(3) An example is not exhaustive, and may extend, but does not limit, the meaning of these rules or the particular provision of these rules to which it relates.

Note Under FSR, article 17 (4), guidance is indicative of the view of the Regulatory Authority at the time and in the circumstances in which it was given.

1.1.4 Application of these rules—general

Subject to rule 1.1.5, these rules apply to an entity that has, or is applying for, an authorisation to conduct any of the following activities:

(a) dealing in investments (if limited to dealing as agent);

Note Dealing in investments as principal is covered by BANK.

(b) managing investments;

(c) providing custody services;

(d) operating a collective investment scheme;

(e) providing custody services in relation to a collective investment scheme;

(f) providing scheme administration (that is, providing scheme administration in relation to a collective investment scheme);

(g) arranging deals in investments;

(h) arranging the provision of custody services;

(i) arranging credit facilities;

(j) advising on investments.

Guidance

1 The following Rules also apply to such a firm:

- if it is a banking business firm, within the meaning given by BANK—those Rules
- in relation to its commercial conduct—COND
- if it is an Islamic financial institution—*ISFI*
- if it operates a collective investment scheme—COLL
- if it operates a private placement scheme—*PRIV*.

Rules that are of general application (CTRL, *INDI*, GENE, *AML/CFTR* and *INAP*) also apply.

2 It is possible for a firm both to be authorised as a banking business firm under BANK (that is, as a deposit-taker, an investment dealer or an Islamic financial

manager) and to hold an authorisation referred to in rule 1.1.4. Both these rules and BANK would apply to such a firm to some degree.

3 In particular, BANK imposes detailed capital requirements whereas these rules impose requirements for minimum paid-up share capital and net liquid assets. However, for a firm that is authorised under both BANK and these rules, compliance with the capital requirements in BANK is taken to be compliance with the requirements under these rules for minimum paid-up share capital and net liquid assets (see rule 3.3.1(2), rule 3.3.3 and rule 3.3.4).

1.1.5 Interaction between these rules and IMEB

If an authorised firm holds both an authorisation referred to in rule 1.1.4 and an authorisation for insurance mediation (within the meaning given by *IMEB*, rule 1.2.2), these rules and *IMEB* each apply to the firm to the extent that the Regulatory Authority directs.

1.1.6 Application of these rules—branches

These rules apply to a branch that has an authorisation to conduct an activity mentioned in rule 1.1.4, except to the extent stated otherwise.

Guidance

The requirements of these rules about financial resources do not apply to branches (see rule 3.3.1), but branches are subject to particular obligations to supply information to the Regulatory Authority (see rule 2.1.7).

1.1.7 Requirement for policy also requires procedures and systems

In these rules, a requirement for an INMA firm to have a policy also requires such a firm to have the procedures, systems, processes, controls and limits needed to give effect to the policy.

1.1.8 Legal form that firms must take

An INMA firm may be:

(a) a limited liability company incorporated under the *Companies Regulations 2005*;

(b) a limited liability partnership incorporated under the *Limited Liability Partnerships Regulations 2005*; or

(c) a branch registered with the QFC Authority.

Note ***Branch*** is defined in the glossary.

Chapter 2 Prudential reporting requirements

2.1.1 Introduction

(1) This Chapter sets out the prudential reporting requirements for an INMA firm.

(2) Prudential returns of an INMA firm must reflect the firm's management accounts, financial statements and ancillary reports. An INMA firm's returns, accounts, statements and reports must all be prepared using the same standards and practices, and must be easily reconcilable with one another.

2.1.2 Preparing returns

(1) An INMA firm must prepare the prudential returns that it is required to prepare by notice published by the Regulatory Authority on an approved website. Such a notice may also require INMA firms to give other information to the authority.

(2) The firm must give the return to the Regulatory Authority within the period stated in the relevant notice.

(3) The Regulatory Authority may, by written notice:

(a) require a firm to prepare additional prudential returns;

(b) exempt a firm from a requirement to prepare annual, biannual, quarterly or monthly returns (or a particular return); or

(c) extend the period within which to give a return.

(4) An exemption may be subject to 1 or more conditions. The firm must comply with any condition attached to an exemption.

(5) The firm must prepare and give prudential returns in accordance with the Regulatory Authority's instructions. The instructions may require that the return be prepared or given through the authority's electronic submission system.

(6) The instructions may be set out in these rules, in the return itself, in a separate document published by the authority on an approved website or by written notice. These instructions, wherever or however they are given, are collectively referred to as ***instructions for preparing returns***.

Note Instructions might be in the form of formulae or blank spaces that the firm must use or fill in and that automatically compute the amounts to be reported.

2.1.3 Giving information

(1) The Regulatory Authority may, by written notice, require an INMA firm to give it information additional to that required by these rules.

(2) An INMA firm must give information to the authority in accordance with the authority's instructions and within the period stated in the notice. The authority may extend the period within which to give the information.

(3) The authority may exempt an INMA firm from giving information. The firm must comply with any condition attached to an exemption.

2.1.4 Accounts and statements to use international standards

(1) An INMA firm must prepare and keep its financial accounts and statements in accordance with AAOIFI, IFRS, US GAAP or other accounting standards approved in writing by the Regulatory Authority.

(2) If the firm decides to prepare and keep its financial accounts and statements in accordance with a standard other than the one it has previously used, it must notify the authority in writing before beginning to do so.

2.1.5 Signing returns

(1) A prudential return must be signed by 2 individuals.

(2) If the individuals approved to exercise the finance function and the senior executive function for the firm are available, they must sign

the return. If either or both of those individuals is or are unable to sign, the return must be signed by 1 or 2 of the individuals approved to exercise the following functions:

(a) the risk management function;

(b) the compliance oversight function;

(c) the executive governance function.

(3) In subrule (2), ***finance function***, ***senior executive function***, ***risk management function***, ***compliance oversight function*** and ***executive governance function*** have the same meanings as in CTRL.

2.1.6 Firm to notify authority

(1) If an INMA firm becomes aware, or has reasonable grounds to believe, that the firm has breached, or is about to breach, a requirement of these rules:

(a) it must notify the Regulatory Authority orally about the matter immediately, but within 1 business day;

(b) it must confirm the oral notification by notice to the authority by no later than the next business day; and

(c) it must not make any distribution to its shareholders or members, whether by way of dividends or otherwise, without the authority's written permission.

Note ***Business day*** and ***writing*** are defined in the glossary.

(2) In particular, an INMA firm must notify the authority as soon as practicable of:

(a) any breach (or foreseen breach) of the firm's obligation to maintain a particular level of net liquid assets; or

Note For the requirement to maintain a particular level of net liquid assets—see rule 3.3.4.

(b) any concern (including because of prospective losses) about whether its financial resources are adequate.

(3) The firm must also notify the authority of any measures taken or planned to deal with any breach, prospective breach or concern.

2.1.7 Branches—obligations to inform Regulatory Authority

(1) This rule applies to an INMA firm that is a branch.

(2) The Regulatory Authority may require the firm to give it a copy of any report that the entity of which the firm is a branch is required by law to make to its home financial services regulator.

(3) If the entity breaches (or expects to breach) a prudential requirement set by law or by its home financial services regulator, the firm must immediately notify the Regulatory Authority and must give the authority copies of any relevant documents (including documents submitted to that financial services regulator).

Note ***Home financial services regulator*** is defined in the glossary.

Chapter 3 General prudential requirements

Part 3.1 General

3.1.1 Governing body's responsibilities

(1) An INMA firm's governing body must consider whether the minimum financial resources required by these rules are adequate to ensure that there is no significant risk that the firm's liabilities cannot be met as they fall due. The firm must obtain additional financial resources if its governing body considers that the minimum required does not adequately reflect the risks of its business.

(2) The governing body is also responsible for:

(a) ensuring that the management of the firm's financial resources is part of the firm's overall risk management, and is aligned with the nature, scale and complexity of its business and its risk profile and risk appetite;

(b) ensuring that the firm has, at all times, financial resources of the kinds and amounts required by these rules; and

(c) monitoring the adequacy and appropriateness of the firm's systems and controls and the firm's compliance with them.

3.1.2 Systems and controls

(1) An INMA firm must have adequate systems and controls to enable it to calculate and monitor its financial resources, and its compliance with the requirements of this Chapter.

(2) The systems and controls must be in writing and must be appropriate for the nature, scale and complexity of the firm's business and its risk profile.

(3) The systems and controls must enable the firm to show at all times whether it complies with this Chapter.

(4) The systems and controls must enable the firm to manage its financial resources in anticipation of events or changes in market conditions.

(5) The firm must have contingency arrangements to maintain or increase its financial resources in times of stress.

Part 3.2 Financial resources—general principles

3.2.1 Financial resources—LLCs and limited partnerships

(1) An INMA firm incorporated under the *Companies Regulations 2005* or the *Limited Liability Partnership Regulations 2005* must at all times have financial resources of the kinds and amounts required by, and calculated in accordance with, these rules.

(2) An INMA firm to which subrule (1) applies must also have, at all times, additional financial resources that are adequate for the nature, scale and complexity of its business to ensure that there is no significant risk that its liabilities cannot be met as they fall due.

Guidance

1 An INMA firm's governing body should assess whether the minimum financial resources required by these rules are adequate for the firm's business. The firm should maintain additional financial resources if its governing body considers that the required minimum financial resources are not adequate for the risks of the firm's business.

2 This rule does not apply to an INMA firm that is a branch.

3.2.2 Financial resources—branches

An INMA firm that is a branch must ensure that:

(a) it has, and maintains, at all times, access to financial resources that are adequate to ensure that there is no significant risk that its liabilities in Qatar cannot be met as they fall due; and

(b) it complies with the prudential requirements set by its home financial services regulator.

Note ***Home financial services regulator*** is defined in the glossary.

Part 3.3 Minimum capital and liquid assets requirements

3.3.1 Application of Part 3.3

(1) This Part does not apply to an INMA firm that is a branch.

Guidance

The entity of which such a firm is a branch would be subject to regulatory requirements about capital and other financial resources in its home jurisdiction.

(2) If an INMA firm is also authorised under BANK, compliance with the capital requirements under those Rules is taken to be compliance with this Part.

3.3.2 References to particular currencies

In these rules, the specification of a sum of money in a particular currency is also taken to specify the equivalent sum in any other currency at the relevant time.

3.3.3 Minimum paid-up share capital

(1) An INMA firm must have paid-up share capital of at least the amount specified, by reference to the activity that the firm is (or is to be) authorised to conduct, in table 3.3.3. If the firm is (or is to be) authorised to conduct more than 1 such activity, it must have the higher or highest of the relevant amounts of paid-up share capital.

Table 3.3.3 Minimum paid-up share capital

Activity	Minimum paid-up share capital (QR)
Dealing in investments (if limited to dealing as agent)	1.8 million
Managing investments	1.8 million
Providing custody services	1.8 million

Activity	Minimum paid-up share capital (QR)
Operating a collective investment scheme	1.8 million
Providing custody services in relation to a collective investment scheme	35 million
Providing scheme administration	900,000
Arranging deals in investments	900,000
Arranging the provision of custody services	900,000
Arranging credit facilities	900,000
Advising on investments	900,000

(2) If the Regulatory Authority considers that, because of the nature, scale and complexity of a particular INMA firm's business, the firm should hold higher paid-up share capital than is required by subrule (1), the authority may at any time require the firm to hold a specified higher amount of paid-up share capital.

Note ***Paid-up share capital*** (for firms that are not companies) is defined in the glossary.

3.3.4 Net liquid assets requirement

(1) An INMA firm must have, at all times, net liquid assets at least equal in value to 25% of the firm's annual operating expenditure. ***Net liquid assets*** is the amount by which the total value of the firm's liquid assets exceeds the total value of its current liabilities.

Note ***Annual operating expenditure*** is defined in rule 3.3.6.

(2) If the Regulatory Authority considers that because of the nature, scale and complexity of a particular INMA firm's business, the firm should hold a greater amount of net liquid assets than is required by subrule (1), the authority may at any time require the firm to hold net

liquid assets to a specified higher percentage of its annual operating expenditure.

3.3.5 Calculating total liquid assets

(1) ***Liquid assets*** means:

(a) cash on hand, and demand deposits, term deposits accessible on demand, and money otherwise deposited with a bank; and

(b) highly liquefiable investments that the Regulatory Authority determines to be appropriate to count as liquid assets (but subject to any direction of the authority about a haircut to be applied).

(2) In calculating the total value of the firm's liquid assets, no amount may be allowed for any of the following:

(a) fixed assets;

(b) any investment, asset or deposit that has been pledged as security or collateral for an obligation or liability;

(c) receivables;

(d) cash held in a client bank account;

(e) deferred tax assets;

(f) unlisted equity investments;

(g) any investment by a subsidiary of the firm in the firm's own shares;

Note ***Subsidiary*** is defined in the glossary.

(h) holdings of investments that are categorised as level 3 under the IFRS fair value hierarchy;

(i) investments in, and loans to, affiliates and related persons.

(3) For this rule:

affiliate of an INMA firm means any entity of which the firm holds 10% or more, but less than a majority, of the voting power.

related person: a person (the ***second person***) is related to another person (the ***first person***) if:

(a) the first person and the second person are members of the same corporate group;

(b) the second person is an individual who is a director or officer of the first person or of another member of the same corporate group;

(c) the second person is the spouse or minor child of an individual mentioned in paragraph (b); or

(d) the second person is a company that is subject to significant influence by or from an individual mentioned in paragraph (b) or (c).

3.3.6 Calculating annual operating expenditure

(1) An INMA firm's ***annual operating expenditure*** is the annualised total of the expenses for the year to date that arose in the normal course of the firm's business, as reported to the Regulatory Authority in the firm's most recent form BR200.

(2) If the firm:

(a) has not yet reported in form BR200; or

(b) at any time during the current reporting period, was not an INMA firm;

the firm must base its annual operating expenditure on the budgeted or forecast accounts that it submitted to the Regulatory Authority as part of its application for authorisation (or any application to vary the scope of its authorisation).

3.3.7 Revision of annual operating expenditure

(1) If an INMA firm:

(a) expects a significant change in its expenditure (either up or down); or

(b) changes its authorised activities;

it must recalculate its annual operating expenditure accordingly.

(2) If an INMA firm has recalculated its annual operating expenditure in accordance with subrule (1), it must submit the recalculation to the Regulatory Authority within 7 days of doing so, and must seek approval for it from the authority. The authority may object to the recalculation within 30 days of receiving it and may direct the firm to revise its net liquid assets requirement accordingly.

3.3.8 Application of rule 3.3.4 to financial groups

(1) If an INMA firm is part of a financial group, the financial group must comply with rule 3.3.4 on a consolidated basis.

(2) The ***financial group*** of an INMA firm is made up of:

(a) the firm;

(b) any subsidiary (direct or indirect) of the firm, if the subsidiary belongs to a sector of the financial industry; and

(c) any entity that the Regulatory Authority directs the firm to include.

Note The instructions for preparing returns divide the financial industry into the following sectors: banking, non-life insurance, life insurance, financial services, equity investments and non-equity investments.

(3) An INMA firm may apply to the Regulatory Authority for approval to exclude an entity from its financial group. The authority will grant such an approval only after the firm satisfies the authority that inclusion of the entity would be misleading or inappropriate for the purposes of supervision.

Guidance

The Regulatory Authority would consider a range of factors when requiring an INMA firm to treat another entity as part of its financial group. These factors would include regulatory risk factors, including direct and indirect participation, influence or contractual obligations, interconnectedness, intra-group exposures, intra-group services, regulatory status and legal framework.

3.3.9 Reductions in paid-up share capital

An INMA firm must not reduce its paid-up share capital without the Regulatory Authority's written approval.

Chapter 4 Management of risk

Guidance for Chapter 4

Risk management should be directly overseen by an INMA firm's governing body. For those obligations—see CTRL, rules 2.2.2, 2.2.3 and 2.2.4.

Part 4.1 Introduction—Chapter 4

4.1.1 Introduction

(1) This Chapter sets out requirements in relation to an INMA firm's risk management strategy and risk management policy.

Note 1 The requirements in this Chapter are additional to the general risk management requirements set out in CTRL.

Note 2 CTRL, rule 4.1.4 (4), requires an INMA firm to establish and regularly review its risk management strategy, which must be appropriate to the nature, scale and complexity of the firm's business.

Note 3 An INMA firm's risk management policy is part of, and supports, the firm's risk management strategy.

(2) This Chapter also sets out the requirement for certain INMA firms to take out and maintain professional indemnity insurance.

Part 4.2 Risk management

4.2.1 Risks to be addressed

(1) In its risk management strategy an INMA firm must identify all the risks to which the firm is exposed.

(2) An INMA firm's risk management policy must address at least operational risk, reputational risk and liquidity risk. Each of those kinds of risk is described in Schedule 1.

(3) If an INMA firm is exposed (because of the nature, scale and complexity of its business, or for any other reason) to any of the other kinds of risk described in Schedule 1, or a risk of any other kind, that risk must also be addressed in the firm's risk management policy.

Guidance

1 Schedule 1 gives guidance about what, in the Regulatory Authority's view, should be included in an INMA firm's risk management policy.

2 The list in Schedule 1 is not exhaustive. With the exception of operational, reputational and liquidity risk, the Regulatory Authority accepts that not all firms will be exposed to all of the risks there described.

4.2.2 Risk management policy

An INMA firm's risk management policy must reflect the nature, scale and complexity of the firm's operations and must include:

(a) the kinds of risk mentioned in rule 4.2.1(2) and other kinds of risk that it has identified itself as exposed to;

(b) the firm's strategies, policies, procedures and processes to deal with those risks;

(c) the firm's assessment of whether its financial resources are adequate to address those risks;

(d) procedures for reporting on compliance with the policy to the firm's governing body and senior management, and for ensuring that the policy is embedded within the firm's decision-making;

(e) triggers and scope for reviewing the policy in the light of changed conditions and factors affecting the firm's risk appetite, risk profile, business activities and financial resources; and

(f) procedures for reporting the results of the reviews to the firm's governing body and senior management.

4.2.3 Staff understanding of risks

An IMNA firm must ensure that its staff clearly understand:

(a) the firm's risk management strategy and policy; and

(b) the kinds of risk mentioned in rule 4.2.1(2) and the other kinds of risk that the firm is exposed to;

so that the staff can identify, assess, manage and mitigate those risks effectively.

4.2.4 Governing body's obligation

An INMA firm's governing body must evaluate the suitability and effectiveness of the information and reports that it and the firm's senior management receive under the firm's risk management policy. The test of suitability and effectiveness is whether the information and reports are suitable for effectively overseeing and implementing the firm's risk management strategy and policy.

Part 4.3 Professional indemnity insurance

4.3.1 Firms must take out and maintain professional indemnity insurance

(1) An INMA firm must take out and maintain professional indemnity insurance in accordance with this Part.

(2) An INMA firm is taken to comply with subrule (1) if its activities are covered by a group-wide professional indemnity insurance policy that covers the firm and its activities and otherwise complies with this Part.

Guidance

If the group-wide policy does not comply with this Part, the firm must obtain professional indemnity insurance that does so.

(3) However, an INMA firm need not take out or maintain such insurance if another firm provides a guarantee for it in accordance with rule 4.3.4.

4.3.2 Minimum requirements for professional indemnity insurance policies

(1) The amount of an INMA firm's professional indemnity cover must be determined by the firm's governing body, and must be adequate, having regard to the nature, scale and complexity of the firm's business.

(2) An INMA firm's professional indemnity insurance policy must provide:

(a) cover for claims for which the firm may be liable as a result of its conduct or the conduct of its employees, the members of its governing body and its agents;

(b) appropriate cover for legal defence costs;

(c) continuous cover for claims arising from work carried out from when the firm was authorised to conduct a regulated activity in or from the QFC; and

(d) cover for awards made against the firm under the customer dispute resolution scheme.

Note ***Customer dispute resolution scheme*** is defined in the glossary.

(3) An INMA firm must not take out professional indemnity insurance that provides for the payment of fines imposed by the Regulatory Authority or the QFC Authority.

(4) If the Regulatory Authority considers that, because of the nature, scale and complexity of a particular INMA firm's business, the firm should increase the level of its professional indemnity insurance cover, the authority may direct the firm to take out professional indemnity insurance that provides a specified minimum level of cover.

4.3.3 Suitability of professional indemnity insurers

(1) Before an INMA firm takes out or renews a professional indemnity insurance policy with an insurer, the firm must be satisfied, on reasonable grounds after making an appropriate assessment, that the insurer is suitable to provide the policy to the firm.

(2) The firm must have systems and controls to ensure that the assessment remains correct.

(3) In assessing whether an insurer is suitable, the firm must have regard to all the relevant circumstances, including the following:

(a) the insurer's credit rating, capital and financial resources;

(b) its regulatory status and history;

(c) its expertise and market reputation;

(d) the regulatory and legal regimes of the jurisdiction in which it is located.

Note ***Jurisdiction*** is defined in the glossary.

(4) Without limiting subrule (1), an insurer that is not authorised in the QFC to conduct insurance business, and does not have an equivalent authorisation in Qatar or a zone 1 country, is suitable to provide a professional indemnity insurance policy to the firm only if all of the requirements in subrule (6) are met.

(5) The ***zone 1 countries*** are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

(6) The requirements are:

(a) that the insurer is rated at least BBB by Standard & Poor's or the equivalent by another rating agency;

(b) that the firm has given notice to the Regulatory Authority about its intention to take out or renew the insurance policy with the insurer; and

(c) that either:

(i) the firm has received written notice from the authority stating that it does not object to the firm's taking out or renewing a policy with the insurer; or

(ii) 28 business days has elapsed since the firm gave the notification to the authority and the authority has not notified the firm in writing that the authority objects to the firm's taking out or renewing a policy with the insurer.

(7) If, at any time after the firm has taken out or renewed a professional indemnity insurance policy with an insurer, the authority considers that the insurer is, or is likely to become, unsuitable to provide the policy, the authority may, by written notice to the firm, require the firm to cancel the policy and take out equivalent professional indemnity insurance with another insurer in accordance with this rule.

4.3.4 What firms may provide guarantees

(1) A firm (the ***guarantor firm***) may provide a guarantee to an INMA firm for this Part only if the guarantor firm has net tangible assets of more than QR35 million.

(2) If the INMA firm is a member of a corporate group in which there is a firm with net tangible assets of more than QR35 million, a firm that is not a member of the group must not provide a guarantee to the INMA firm.

Note ***Corporate group*** is defined in the glossary.

(3) A guarantee provided for this Part:

(a) must be in writing; and

(b) must make provision at least equal to the provision required by rule 4.3.2 (Minimum requirements for professional indemnity insurance policies).

(4) The INMA firm must give a copy of the guarantee to the Regulatory Authority.

4.3.5 Notices to the Regulatory Authority

An INMA firm:

(a) every year, must give the Regulatory Authority a copy of the firm's professional indemnity insurance cover for the following 12-month period;

(b) must notify the authority of any significant changes to the cover, including the level of cover and the renewal or termination of the cover; and

(c) must notify the authority of any significant claim against the firm of professional misconduct or negligence, or by the firm under its professional indemnity insurance cover.

Guidance

Whether a claim is significant depends on the nature, scale and complexity of the firm. The Regulatory Authority expects firms to treat a series of single claims that are significant in the aggregate as significant.

Chapter 5 Client money

Part 5.1 Client money—introductory

5.1.1 Introduction

(1) This Chapter sets out the rules about which INMA firms can deal with customers' money in the course of carrying on business in relation to relevant investments. Only an investment business firm (defined in rule 5.1.2) is permitted to hold customers' money.

Note ***Relevant investment*** is defined in the glossary.

(2) The Chapter covers how such money must be safeguarded and accounted for, including what kinds of bank accounts the firm may establish or use, and what happens if the firm itself or another firm that holds customers' money becomes insolvent.

5.1.2 Investment business firms and advisory firms

(1) An ***investment business firm*** is an INMA firm whose authorisation permits it to conduct any 1 or more of the following regulated activities in or from the QFC:

(a) dealing in investments as agent;

(b) managing investments;

(c) operating collective investment schemes;

(d) providing custody services.

(2) Any other INMA firm is an ***advisory firm***.

Note An advisory firm's authorisation would permit it to carry on 1 or more of the following regulated activities, and no other regulated activity:

- providing scheme administration
- arranging deals in investments
- arranging the provision of custody services
- arranging credit facilities

- advising on investments.

5.1.3 Advisory firms not to hold client money

An advisory firm must not hold client money.

Note For what an advisory firm must do if it receives client money—see rule 5.4.1.

5.1.4 Chapter 5 application to QFC schemes

This Chapter does not apply to the independent entity of a QFC scheme that is not a private placement scheme, or to the operator of a QFC scheme that is a private placement scheme, in relation to safeguarding the scheme property.

Note ***Independent entity***, ***QFC scheme***, ***private placement scheme***, ***operator*** and ***scheme property*** are defined in the glossary.

Part 5.2 Client money concepts

5.2.1 When a firm holds money

An investment business firm ***holds*** money if the money is held:

(a) directly by the firm;

(b) in an account in the firm's name; or

(c) by a person, or in an account in the name of a person, controlled by the firm.

Note ***Money*** is defined in the glossary.

5.2.2 Client money

(1) ***Client money*** of an investment business firm is money:

(a) that the firm receives from or holds for a customer in the course of, or in connection with, conducting investment and advisory business in or from the QFC; or

(b) that the firm treats as client money in accordance with this Chapter.

(2) However, money that the firm receives or holds that would otherwise be client money is not client money if an exception in Part 5.3 (Money that is not client money) applies to it.

5.2.3 Eligible banks

In these rules:

eligible bank means:

(a) a QFC bank; or

Note ***QFC bank*** is defined in the glossary.

(b) an entity for which all of the following requirements are satisfied:

(i) it is incorporated in a jurisdiction outside the QFC;

(ii) it is regulated as a bank, and principally regulated for prudential purposes, by an overseas regulator in the jurisdiction;

(iii) the Regulatory Authority has not, by notice, declared that this definition does not apply to the jurisdiction;

(iv) the entity is required to prepare audited accounts;

(v) it has assets of QR35 million or more;

(vi) it had surplus revenue over expenditure for its last 2 financial years;

(vii) its latest annual audit report is not materially qualified.

5.2.4 Eligible third parties

In these rules:

eligible third party means:

(a) an authorised firm (other than an eligible bank); or

(b) an entity for which all of the following requirements are satisfied:

(i) it is authorised (however described) under the law of a jurisdiction outside the QFC to carry on any business of a similar nature to investment and advisory business;

(ii) it is principally regulated for prudential purposes by an overseas regulator in the jurisdiction;

(iii) the Regulatory Authority has not, by notice, declared that this definition does not apply to the jurisdiction.

Part 5.3 Money that is not client money

5.3.1 Money that is not client money—money payable to firm

(1) Money is not ***client money*** of an INMA firm in relation to a customer if it is (or becomes) payable immediately by the customer to the firm for the firm's own account.

(2) Without limiting subrule (1), money is payable to the firm for the firm's own account if it is paid by the customer to the firm, or deducted by the firm from money held by it for the customer, in settlement of:

(a) a fee or charge that is payable by the customer to the firm;

(b) an amount payable by the customer to the firm in relation to an amount paid by the firm:

(i) for the purchase of an investment by or for the customer; or

(ii) in settlement of a margin payment made for the customer; or

(c) an amount payable by the customer to the firm for an unpaid purchase of an investment by or for the customer, if the investment has been delivered to the customer or credited to the customer's account.

5.3.2 Money that is not client money—cheques sent to regulated financial institutions

(1) ***Client money*** of an INMA firm does not include a cheque received from a customer that is payable to a regulated financial institution, if:

(a) the cheque is not collected or paid in the QFC; but

(b) the firm sends it to the financial institution, in accordance with the customer's instructions, as soon as practicable (but no later than 2 business days after the day when the firm receives it).

(2) An investment business firm must make and retain:

(a) a record of every cheque to which subrule (1) applies; and

(b) a copy of each such cheque.

(3) The record of such a cheque must include the following details:

(a) the customer's name;

(b) the name of the financial institution;

(c) the date on which the firm received the cheque;

(d) the date on which the firm sent it to the financial institution.

(4) In this rule:

regulated financial institution means an entity that is not an authorised firm but is authorised or licensed in a jurisdiction other than the QFC to carry on a financial service.

5.3.3 Money that is not client money—money to which client money protection rules do not apply

Money held by an INMA firm is not ***client money*** of the firm if, under Part 5.6 (Disapplication of client money protection rules), the client money protection rules do not apply to the money.

5.3.4 Money that is not client money—money held by QFC bank

(1) Money held in an account with a QFC bank is not ***client money*** of the firm if the firm has notified the customer concerned, in writing, that:

(a) money belonging to the customer will be held by the QFC bank as a bank and not as trustee; and

(b) such money will not be subject to the client money protection rules.

Note ***QFC bank*** is defined in the glossary.

(2) The notification may be in the firm's terms of business.

Note Under COND, Ch 4, an INMA firm must give a customer a statement, in writing, of the terms and conditions on which the firm will conduct investment and advisory business for the customer. In those Rules such a statement is called the firm's *terms of business*. See that Chapter for detailed requirements.

5.3.5 Money that is not client money—money held in guaranteed account

(1) Money held in an account with an INMA firm itself is not ***client money*** of the firm if:

(a) all of the firm's obligations to repay the money to the customer concerned (or to the customer's order) have been fully, unconditionally and irrevocably guaranteed by an eligible bank; and

(b) the firm has complied with subrule (2).

(2) For subrule (1) (b), the firm:

(a) must notify the customer in writing that:

(i) the firm's obligations to repay money belonging to the customer have been fully, unconditionally and irrevocably guaranteed by an eligible bank; and

(ii) such money is not subject to the client money protection rules; and

(b) must give the customer a copy of the guarantee from the bank.

(3) The notification required by paragraph (2) (a) may be in the firm's terms of business.

5.3.6 Money that is not client money—money from associate

(1) Money received from an associate of an INMA firm is not ***client money*** of the firm.

Note ***Associate*** means another firm in the same corporate group—see the glossary.

(2) However, money received from an associate of an INMA firm is ***client money*** if the associate notifies the firm in writing that the money is to be held by the firm on behalf of a person who is not in the same corporate group as the firm.

5.3.7 Money that is not client money—money for issue or redemption of units in QFC schemes

(1) Money received by an INMA firm or banking business firm (within the meaning given by BANK) that is the operator of a QFC scheme in a delivery-versus-payment transaction in relation to units in the scheme is not ***client money*** of the firm if:

(a) subject to subrule (2), the firm receives it from a customer in relation to the firm's obligation to issue the units; or

(b) the money is held in the course of redeeming the units and the proceeds of that redemption are paid to a customer within the time allowed by COLL to do so.

(2) If the price of the units has not been determined by the close of business on the next business day after the day on which the firm received the money from the customer (or, if the customer paid the money to an approved representative of the firm, the day on which the firm received the money from the representative), subrule (1) does not apply (and the firm must treat the money as client money).

(3) If the firm draws a cheque to pay the customer under subrule (1) (b) and the cheque is drawn within the time allowed by COLL for paying the customer, rule 5.7.1(3) (Payments to be in accordance with Part 5.7) does not apply.

Part 5.4 Receipt of client money by advisory firms

5.4.1 Advisory firms receiving client money

(1) An advisory firm must immediately return to the customer any money that it receives from a customer if none of the exceptions in Part 5.3 (Money that is not client money) applies to the money.

(2) The firm must make and retain:

(a) a record of all money to which subrule (1) applies; and

(b) for a payment made by cheque—a copy of the cheque.

(3) The record must include the following details:

(a) the customer's name;

(b) the date on which the money was received by the firm;

(c) the date on which the money was returned to the customer.

Part 5.5 Client money protection rules

Division 5.5.A Client bank accounts

5.5.1 Client bank account

A ***client bank account*** of an investment business firm is a bank account maintained by the firm with an eligible bank as a bank account for client money received from 1 or more of the firm's customers.

Note Advisory firms are not allowed to hold client money (see rule 5.1.3).

5.5.2 Firms must open client bank account

An investment business firm must open 1 or more client bank accounts before it receives client money.

5.5.3 Client bank account requirements

(1) A client bank account:

(a) must be a current or deposit account in an eligible bank in the name of the investment business firm that maintains the account; and

(b) must have the words 'client bank account' in its name.

(2) The account's name must otherwise sufficiently distinguish it from an account that holds money belonging to the firm.

5.5.4 Requirements before firm can pay client money into client bank accounts

(1) An investment business firm must not pay client money, or permit client money to be paid, into its client bank account unless:

(a) under the law applying to the money and the bank account, the money will be taken to be segregated from, and will not form part of, the firm's assets in its insolvency;

(b) after making an appropriate assessment, the firm is satisfied, on reasonable grounds, that the bank is suitable to hold the money in the account; and

(c) the bank has given the confirmation required by subrule (3).

(2) In assessing whether an eligible bank is suitable to hold the money in the account, the firm must take into account all the relevant circumstances, including:

(a) the bank's credit rating, capital and financial resources;

(b) the regulatory and insolvency regimes of the jurisdiction in which the bank is located;

(c) the bank's reputation; and

(d) the bank's regulatory status and history.

Note ***Eligible bank*** is defined in rule 5.2.3; ***jurisdiction*** is defined in the glossary.

(3) The bank must give the firm the confirmation in writing. The confirmation must state:

(a) that all money standing to the credit of the account is held by the firm as trustee;

(b) that the bank is not entitled:

(i) to combine the account with any other account; or

(ii) to exercise any right of set-off or counterclaim or any security interest against money in the account for any debt or other obligation owed to it on any other account of the firm; and

(c) that the name of the account includes the words 'client bank account' and sufficiently distinguishes it from an account that holds money belonging to the firm.

Division 5.5.B Terms of holding client money

5.5.5 Client money—creation of trust and terms of holding

(1) Client money held by an investment business firm is subject to a trust.

(2) The firm is the trustee of the trust. The firm holds the client money on the following terms:

(a) that the money is held for the purposes, and on the terms, of the client money protection rules and client money distribution rules;

(b) that the money is held for customers, according to their respective interests in it;

(c) that, on the failure of the firm, the money will also be held for the payment of costs attributable to the distribution of the money;

(d) that, after all valid claims and costs under paragraphs (b) and (c) have been met, the money is held for the firm itself.

5.5.6 Fiduciary duties of firm

(1) The fiduciary duties of an investment business firm over client money continue until the money ceases to be client money under rule 5.7.2 (Certain payments out of client bank account to discharge fiduciary duties).

(2) However, the fiduciary duties of a firm over client money do not cease if the money is transferred to an eligible third party.

5.5.7 Accounting for client money

(1) An investment business firm must ensure that it can promptly and accurately account for client money that it receives or holds.

(2) Without limiting subrule (1), the firm must have procedures:

(a) to enable it to identify and trace client money that it receives (electronically, by post, through an agent or by any other means) or holds;

(b) to promptly record the receipt of all client money;

(c) to ensure that, except as permitted by these rules, client money is not mixed with other money; and

(d) to enable it to produce accurate accounting records showing how much client money has been transferred to customers and other persons.

5.5.8 Duty to keep money segregated

(1) Except as provided in this Part, an investment business firm must not pay its own money into a client bank account.

(2) If an investment business firm considers it prudent to do so, the firm may pay its own money into a client bank account to protect client money in the account.

(3) An investment business firm may hold money (other than client money, or the firm's own money) in a client bank account if (and only if) the money:

(a) is a minimum sum required to open the account or to keep it open;

(b) is temporarily in the account in accordance with rule 5.5.10(3) (which relates to mixed remittances);

(c) is excess interest that has not been paid out of the account; or

(d) is to meet any shortfall.

Example

An investment business firm may pay money into a client bank account for bank fees and charges payable on the account.

(4) Any money paid into a client bank account under subrule (3) becomes client money for the purposes of the client money protection rules and the client money distribution rules.

Note ***Client money protection rules*** and ***client money distribution rules*** are defined in the glossary.

5.5.9 Client money received in different currency

If an investment business firm receives client money in a currency other than the currency in which the firm's client money account is

denominated, the firm must convert the money into the currency of the account within 1 business day after receiving it.

Guidance

Firms should not speculate with client money on the currency markets.

Note Under COND, Chapter 4, an investment business firm must disclose to retail customers, in writing, the basis or amount of the firm's charges for conducting investment and advisory business.

5.5.10 Payment of client money into client bank accounts

(1) If an investment business firm holds client money it must ensure, unless this Part provides otherwise, that the money is paid into a client bank account as soon as possible and in any event within 1 business day after receipt.

(2) If the money is received by the firm in the form of an automated transfer, the firm must take reasonable steps to ensure that:

(a) the money is received directly into a client bank account; or

(b) if the money is received directly into the firm's own account, the money is transferred into a client bank account within 1 business day after receipt.

(3) If an investment business firm receives a mixed remittance (that is, one that is partly client money and partly other money), the firm:

(a) must pay the full sum into a client bank account in accordance with subrule (1); and

(b) must transfer that part of the payment that is not client money within 1 business day (in the jurisdiction in which the account is held) after the day on which it would normally expect the remittance to be cleared.

(4) An investment business firm must take reasonable steps to ensure that it is notified promptly if it receives client money in the form of client entitlements.

Examples of client entitlements

- dividends

- coupon payments
- other distributions with similar characteristics.

5.5.11 Approved representatives and non-QFC intermediaries—payment into client bank accounts

An investment business firm must take reasonable steps to ensure that client money received by an approved representative or non-QFC intermediary of the firm is paid into a client bank account of the firm as soon as possible after it is received but within 1 business day after the day on which it is received.

5.5.12 Segregating client money in other currencies

An investment business firm may segregate client money in an account denominated in a different currency from that of receipt, provided that the firm ensures that the amount held is adjusted each day so that the amount held remains at least equal to the amount received, in the original currency (or the currency in which the firm has its liability to its customer, if different), converted at the previous day's closing spot exchange rate.

Guidance

Rule 5.5.12 is intended to cater for investment business firms that receive money in a currency that they do not usually receive and for which they do not have a client bank account. Firms should not view this rule as an opportunity to speculate with client money on the currency markets.

Note Under COND, Chapter 4, an investment business firm must disclose to retail customers, in writing, the basis or amount of the firm's charges for conducting investment and advisory business, including any costs or charges that are not borne by the firm and are associated with holding client money in, or converting client money into, a different currency from that of receipt.

5.5.13 When client money need not be paid into client bank account

(1) The requirement to pay client money into a client bank account does not apply to client money received in the form of a cheque until the

investment business firm concerned receives the proceeds of the cheque.

(2) That requirement does not apply to client money temporarily held by the firm before forwarding it to a person nominated by the customer concerned.

5.5.14 Procedures to identify client money

An investment business firm must have procedures to identify client money received and to promptly record receiving it. The procedures must cover client money received by any means, including through the mail, electronically and by way of an agent of the firm.

5.5.15 Suitability of eligible third parties

When assessing the suitability of an eligible third party, an investment business firm must have regard to all the relevant circumstances including:

(a) the third party's credit rating, capital and financial resources;

(b) the regulatory and insolvency regimes of the jurisdiction in which the third party is located;

(c) the third party's reputation;

(d) its regulatory status and history; and

(e) the other members of its corporate group and their activities.

Note ***Eligible third party*** is defined in rule 5.2.4.

5.5.16 When client money payable to eligible third party

(1) Except as otherwise provided in these rules, an investment business firm may pay client money into an account with an entity that is not an eligible bank, or permit the payment of client money into such an account, only if the entity is an eligible third party.

(2) An investment business firm may pay client money to a third party account, or permit the payment of client money into such an account, only if the money is to be used:

(a) for a transaction or series of transactions for the customer concerned; or

(b) to meet an obligation of the customer.

(3) An investment business firm may pay client money into a third party account, or permit the payment of client money into such an account, only if:

(a) under the laws applying to the money and the account, the money will be recognised as segregated from, and will not form part of, the firm's assets in its insolvency; and

(b) after making an appropriate assessment, the firm is satisfied, on reasonable grounds, that the third party is a suitable person to hold the money in a third party account.

Note Rule 5.5.15 applies to the making of an assessment for subrule (3) (b).

(4) The firm must have systems and controls to ensure that:

(a) the requirement in subrule (3) (a) continues to be met; and

(b) the assessment made for subrule (3) (b) remains correct.

(5) An investment business firm may pay, or permit the payment of, client money to a third party account, only if:

(a) the title of the account includes the words "client account"; and

(b) the firm:

(i) has notified the relevant eligible third party in writing that:

(A) all money standing to the credit of the account is held by the firm as trustee; and

(B) the 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 the account in relation to any sum owed to it on any other account of the firm; and

(ii) has requested the third party to give it a written acknowledgement of the matters set out in subparagraph (i).

(6) If an eligible third party does not provide the acknowledgement referred to in subrule (5) (b) (ii) within 1 month after the firm requests it, the firm may continue to hold client money with the third party if the firm:

(a) promptly gives notice in writing to any customer to whom the firm owes client money that the 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 firm; and

(b) ensures that any notification that it subsequently sends under this rule includes a statement that the third party has not accepted that it has no such right of set-off or counterclaim.

5.5.17 Excess client money to be held no longer than necessary

An investment business firm must not hold excess client money in a third party account for longer than necessary to effect the relevant transaction or satisfy the relevant obligation.

5.5.18 Firms to have systems and controls

An investment business firm must maintain systems and controls to identify money that is in a client bank account or third party account but is not permitted to be in the account, and for transferring such money out of the account without delay.

Part 5.6 Disapplication of client money protection rules

5.6.1 When client money protection rules do not apply—business customers and market counterparties

(1) The client money protection rules do not apply to money held by an investment business firm on behalf of a business customer if:

(a) the customer has opted-out of the protection conferred by those rules; and

Note For how to opt-out—see rule 5.6.2.

(b) the firm has notified the customer in writing:

(i) that the customer's money will not be subject to the protections conferred by those rules;

(ii) that the customer's money will not be segregated from the firm's money;

(iii) that the customer will rank only as a general unsecured creditor of the firm for that money; and

(iv) if the firm proposes to provide discretionary investment management services to the customer:

(A) that the firm will have significant control over the amount of unsecured credit risk that the customer is taking on the firm; and

(B) that the customer should consider that risk carefully before commencing business on that basis with the firm.

(2) The notification required by paragraph (1) (b) may be in the firm's terms of business.

Note Under COND, Chapter 4, an investment business firm must give a customer a statement, in writing, of the terms and conditions on which the firm will conduct investment and advisory business for the customer.

In those Rules such a statement is called the firm's *terms of business*. See that Chapter for detailed requirements.

(3) The client money protection rules do not apply to money held by an investment business firm on behalf of a customer that is a market counterparty, unless the firm has agreed to treat money held by or on behalf of the customer in accordance with those rules.

5.6.2 How business customers opt-out of protections

A business customer of an investment business firm opts-out of the protections conferred by the client money protection rules by giving the firm a written acknowledgement of the firm's notification under rule 5.6.1(1)(b).

5.6.3 When client money protection rules do not apply—delivery-versus-payment transactions through commercial settlement systems

(1) Subject to subrule (3), the client money protection rules do not apply to money received from a customer of an investment business firm in relation to a delivery-versus-payment transaction through a commercial settlement system if:

(a) the firm has elected not to treat money from that customer as client money;

(b) the firm has given the customer a notification under rule 5.6.1(1)(b);

(c) in the case of a customer purchase, the money will be due to the firm within 1 business day after the firm delivers the investments; and

(d) in the case of a customer sale, the money will be due to the customer within 1 business day after the customer delivers the investments.

(2) The notification required by subrule (1) (b) may be in the firm's terms of business.

(3) Money about which an election has been made in accordance with subrule (1) (a) must be treated as client money if the delivery or payment by the firm does not occur within 3 business days after the date of the payment or delivery of the investments by the customer.

Part 5.7 Payments out of client bank accounts

5.7.1 Payments to be in accordance with Part 5.7

(1) An investment business firm must have procedures to ensure that every payment out of a client bank account is authorised and made in accordance with this Part.

(2) An investment business firm may pay money out of a client bank account if (and only if):

(a) the money is not client money;

(b) the money has been paid into the account in error;

(c) the money is to be paid into another client money account of the firm;

(d) the money is to be paid immediately to a customer or the duly authorised representative of a customer;

(e) the money is to be paid into:

(i) the customer's own account (not an account that is also in the name of the firm); or

(ii) a client bank account of an eligible third party as part of a transfer or series of transfers to eligible third parties;

(f) the money is to be paid on the instructions, or with the consent, of a customer;

Example

Payment to meet an obligation of the customer for professional fees

(g) the money is to be paid to the firm for the firm's own account, under rule 5.3.1 (Money that is not client money—money payable to firm); or

Guidance for paragraph (g)

An investment business firm may deduct money to pay an investment business firm's commission or fees in relation to a customer from client money received from the customer after the payment has cleared and the

client money calculation has been completed. For the calculation see rule 5.9.1.

Note Under rule 5.3.1, money that is (or becomes) payable immediately by the customer to the firm for the firm's own account is not client money.

(h) the money is surplus that is to be paid to the firm under rule 5.9.2(b).

(3) Money paid out of a client bank account by cheque must remain in the account (and must continue to be treated as client money) until the cheque is presented to the customer's bank and cleared by the paying agent.

(4) An investment business firm must not overdraw its client bank account.

(5) An investment business firm must ensure that no payment is made from its client bank account for a customer before sufficient funds have been paid into the account for the customer and have been cleared.

5.7.2 Certain payments out of client bank account to discharge fiduciary duties

(1) Client money that is paid out of a client bank account ceases to be client money if it is paid:

(a) to a customer or the duly authorised representative of a customer;

(b) on the instructions, or with the consent, of a customer;

(c) into the customer's own account (not an account that is also in the name of the firm);

(d) to the firm for the firm's own account under rule 5.3.1 (Money that is not client money—money payable to firm); or

(e) to the firm as surplus under rule 5.9.2(b) (What to do if CM resource is less than or more than CM requirement).

(2) However, if client money is paid out of a client bank account by cheque, the money ceases to be client money after the cheque is presented to the customer's bank and cleared by the paying agent.

Note An investment business firm's fiduciary duties over client money cease if the money is paid in accordance with this rule (see rule 5.5.6 (1)).

5.7.3 Firms not to use money for other purposes

Nothing in these rules allows an investment business firm to use client money otherwise than in accordance with this Chapter.

Part 5.8 Customer notifications about client money

5.8.1 Manner of giving notice

A notice to be given under this Part may be given in:

(a) the firm's terms of business;

(b) another disclosure document required under COND; or

(c) any other document.

5.8.2 Firms must notify customers of certain matters

(1) Before, or as soon as reasonably practicable after, an investment business firm receives client money from a customer, the firm must notify the customer about the following matters:

(a) that the money:

(i) will be held by the firm, as trustee, on the terms of the client money protection rules; and

(ii) will be segregated from money belonging to the firm;

(b) that, in case of failure of the firm, the money will be subject to the client money distribution rules;

(c) whether interest on the money is payable to the customer and, if so, the terms and frequency of the payments;

(d) that, despite the client money protection rules, the customer may be taking an unsecured credit risk on:

(i) the eligible bank into which the money is paid; or

(ii) any eligible third party to whom the money is paid; and

Note In relation to the priority ranking after a firm-related distribution event—see rule 5.10.4.

(e) if the firm intends to pay the money into a client bank account with an eligible bank that is in the same corporate group as the

firm or maintained by an eligible third party that is in the same group as the firm:

(i) a statement of that fact; and

(ii) the name of the bank or third party.

Note ***Corporate group*** is defined in the glossary.

(2) If the firm intends to pay the money into a client bank account outside the QFC, the firm:

(a) must obtain the customer's consent; or

(b) must notify the customer in writing:

(i) that client money might be paid into a client bank account outside the QFC;

(ii) that the legal, insolvency and regulatory regimes that apply to the account may be different from those that would apply to it in the QFC; and

(iii) that if the bank were to fail the money might be treated differently from how it would have been treated in the QFC;

and must include in the notification an adequate explanation of the implications of holding money outside the QFC.

5.8.3 Firms must comply with customers' instructions

(1) Despite anything else in this Chapter, a customer of an investment business firm may at any time instruct the firm in writing not to pay client money of the customer into a client bank account:

(a) outside the QFC;

(b) with an eligible bank that is in the same corporate group as the firm; or

(c) with an eligible third party that is in the same corporate group as the firm.

(2) The firm must comply with the customer's instructions from the date on which the instructions are given or any later date specified in them.

Part 5.9 Reconciliation of client money

Division 5.9.A Calculation and reconciliations

5.9.1 Duty to perform client money calculation

(1) An investment business firm must carry out a calculation (***client money calculation***) at least once a month to ensure that, as at the close of business on the day before the calculation is carried out (the ***cut-off date***), the firm's client money resource (***CM resource***) is at least equal to its client money requirement (***CM requirement***).

(2) The client money calculation is carried out as follows:

Step 1

Calculate the firm's ***CM resource*** by adding the following amounts (as at the cut-off date):

- the amount in the firm's client bank accounts;
- the amount transferred to eligible third parties;
- any amount immediately payable to the firm by customers and other persons.

Step 2

To calculate the firm's ***CM requirement***, add the following amounts of client money (as at the cut-off date):

- unearned fees or unearned commissions payable to the firm;
- the amount transferred to eligible third parties;
- any money held by approved representatives or non-QFC intermediaries of the firm;
- any amounts immediately payable to customers and other persons by the firm.

Note Under rule 5.7.1(3), an amount paid by cheque must remain in the client bank account until the cheque is presented to the customer's bank and cleared by the paying agent.

Step 3

Compare the CM resource and the CM requirement to see whether they are equal.

(3) If the firm's CM resource is less than its CM requirement, the firm has a shortfall and must pay money into the client bank account to which the shortfall relates in accordance with rule 5.9.2(a).

(4) If the firm's CM resource is greater than its CM requirement, the firm has a surplus and must pay the surplus out of the client bank account to which the surplus relates in accordance with rule 5.9.2(b).

(5) Within a reasonable period after carrying out the client money calculation, the firm must also:

(a) match its CM resource to its CM requirement for each customer; and

(b) achieve a match for a majority of its customers and transactions.

5.9.2 What to do if CM resource is less than or more than CM requirement

If an investment business firm's client money calculation shows that its CM resource is less than, or more than, its CM requirement, the firm must ensure that:

(a) if the CM resource is less than the CM requirement—the amount of that shortfall is paid into the client bank account to which it relates by the close of business on the day on which the shortfall is discovered; or

Note For an investment business firm's obligation to notify the Regulatory Authority if it might not be able to pay-in the shortfall on time—see rule 5.9.8.

(b) if the CM resource is more than the CM requirement—the amount of that surplus is paid out of the client bank account to which it relates by the close of business on the day on which the surplus is discovered, unless the firm considers that it is prudent to keep the money in the account to protect other money in the account.

Example of when it might be prudent to keep surplus

An investment business firm might want to keep money in the account if there are unreconciled items in its business ledgers as at the date of the calculation, and the firm wants to ensure that the client money in the account is protected.

Guidance

1 An investment business firm should not pay money from the client bank account for the firm's own account before the client money calculation has been carried out. See rule 5.7.1(2)(g) and the guidance to that rule.

2 Rule 5.5.8(3) allows money (other than client money) to be kept in a client bank account if the amount is the minimum amount necessary to open the account or keep it open. Rule 5.5.8(2) allows a firm to pay its own money into a client bank account if the firm considers it prudent to do so to protect client money in the account.

5.9.3 Duty to reconcile accounts

Within 10 business days after the day on which an investment business firm carries out a client money calculation, the firm must reconcile the balance, as recorded by the firm, on each of its client bank accounts with the balance on that account in the statement or confirmation given by the bank with which the account is maintained.

Guidance

When reconciling bank statements, firms should be aware that cheques that have been drawn but not presented and cleared might create an apparent surplus in the client bank account, and that if the amount of such a cheque is paid out of the account after the calculation, a shortfall might result.

5.9.4 Duty to review calculation and reconciliation

(1) An investment business firm must ensure that a calculation or reconciliation under this Division is reviewed by an employee of the firm who has sufficient seniority.

(2) The employee must state in writing whether the calculation or reconciliation was carried out in accordance with this Division.

5.9.5 Duty to rectify discrepancies

(1) An investment business firm must investigate and rectify any discrepancy discovered by a calculation, reconciliation or review under this Division unless the discrepancy is solely because of timing differences between the accounting systems of the firm and the bank concerned.

(2) If appropriate, the firm must rectify such a discrepancy by paying money into or out of the relevant client bank account. The firm must do so as soon as possible, but within 1 business day after the discrepancy is discovered.

Division 5.9.B Notice of certain events

5.9.6 Duty to notify significant discrepancies

An investment business firm must notify the Regulatory Authority immediately if the firm discovers a significant discrepancy by a

calculation, reconciliation or review under Division 5.9.A (Calculation and reconciliations) and the discrepancy is not rectified within 1 business day after the day on which it is discovered.

5.9.7 Duty to notify failure to carry out calculation or reconciliation

An investment business firm must notify the Regulatory Authority immediately if it cannot or does not carry out a calculation, reconciliation or review required by Division 5.9.A.

5.9.8 Duty to notify inability to pay-in shortfall

An investment business firm must notify the Regulatory Authority immediately if it becomes aware that it may not be able to pay-in a shortfall by the close of business on the day the shortfall is discovered.

Note For the obligation to pay-in a shortfall—see rule 5.9.2(a).

Part 5.10 Client money distribution rules

Division 5.10.A Client money distribution rules—general

5.10.1 Firm-related distribution event

Each of the following is a ***firm-related distribution event*** for an investment business firm:

(a) the appointment of a liquidator, receiver or administrator or of a trustee in bankruptcy;

(b) an event in any jurisdiction equivalent to an appointment mentioned in paragraph (a);

(c) the withdrawal of the firm's authorisation;

(d) the imposition or variation of a condition, restriction or requirement on the firm's authorisation so that it is no longer permitted to hold client money.

5.10.2 Third-party-related distribution event

Each of the following is a ***third-party-related distribution event*** for an eligible bank or eligible third party:

(a) the appointment of a liquidator, receiver or administrator or of a trustee in bankruptcy;

(b) an event in any jurisdiction equivalent to an appointment mentioned in paragraph (a).

5.10.3 Duty to notify distribution events

An investment business firm must have procedures to ensure that the Regulatory Authority and the firm's customers are promptly informed of:

(a) any firm-related distribution event; or

(b) any third-party-related distribution event in relation to:

(i) an eligible bank with which the firm maintains a client bank account for money received from those customers; or

(ii) an eligible third party to which the firm pays client money of those customers.

Division 5.10.B Distribution after firm-related distribution events

5.10.4 Firm-related distribution events—order of distribution

(1) After a firm-related distribution event in relation to an investment business firm (whether the firm is incorporated in the QFC or otherwise), the firm must distribute client money as set out in this rule.

(2) All client money held in a client bank account or third party account must be pooled and distributed:

(a) first, to pay the costs of distributing it in accordance with paragraph (b); and

(b) secondly, to customers for whom it is held, proportionately in accordance with the amount of their respective valid claims against the firm for client money.

(3) Any client money remaining in the firm's client bank accounts and third party accounts after the satisfaction of all the claims referred to in subrule (2) must be distributed:

(a) if a liquidator, receiver, administrator, or trustee in bankruptcy has been appointed over the firm—in accordance with the applicable insolvency or bankruptcy laws; or

(b) in any other case—as the Regulatory Authority directs.

(4) If the amount of client money held in the firm's client bank accounts and third party accounts is not enough to satisfy all its customers' valid claims for client money, all the firm's other beneficially-owned assets may be used to satisfy those claims in priority to all of the

firm's other creditors (other than creditors that have a prior ranking security interest in such assets).

5.10.5 Client money received after firm-related distribution event

(1) If an investment business firm receives client money after a firm-related distribution event:

(a) the money must not be pooled with client money held in a client bank account that was opened before the event; and

(b) either:

(i) the money must be returned to the relevant customer without delay; or

(ii) if the money cannot be returned without delay—the money must be paid into a client bank account opened after the event, and must be held in the account until it can be returned to the customer.

(2) However, client money received by an investment business firm after a firm-related distribution event need not be returned to the customer to the extent that:

(a) the money relates to a transaction that had not been completed at the time of the event and the firm has decided to use it to complete the transaction; or

(b) it is due from the customer to the firm at the time of the event.

Division 5.10.C Third-party-related distribution events

5.10.6 Firms' continuing fiduciary duties

An investment business firm is not responsible for any deficit in client money arising as a result of, or in connection with, a third-party-related distribution event if the firm:

(a) used appropriate skill, care and judgement in selecting the eligible bank or eligible third party concerned, and in subsequently monitoring the bank or third party; and

(b) complied with its other fiduciary duties.

Note ***Third-party-related distribution event***, ***client money***, ***eligible bank*** and ***eligible third party*** are defined in the glossary.

5.10.7 Firms may make good deficit

(1) If an investment business firm is not responsible for a deficit in client money that arose as a result of, or in connection with, a third-party-related distribution event, rule 5.10.6 does not prevent the firm from choosing to make good the deficit.

(2) If the firm chooses not to make good the deficit:

(a) the deficit must be borne by customers who have valid claims against the firm for client money owed to them by the firm, in proportion to the respective value of their claims; and

(b) the firm must promptly notify each affected customer in writing of the amount of the deficit and the customer's share in it.

(3) As soon as is practicable after the deficit is known, the firm must make and retain a record of each customer's share in the deficit.

5.10.8 Client money received after third-party-related distribution event

(1) If an investment business firm receives client money after a third-party-related distribution event, the firm must not pay the money to the eligible bank or eligible third party that suffered the event unless the customer concerned gives written instructions after the event to pay the money to the bank or third party to meet an obligation to the bank or third party.

(2) If the firm does not receive any such instructions, it must pay the money into a client bank account, opened after the event, with another eligible bank or eligible third party.

Chapter 6 Providing custody services

6.1.1 Application of Chapter 6

(1) Subject to subrules (2) and (3), this Chapter applies to an INMA firm that has an authorisation for providing custody services or arranging the provision of custody services.

(2) This Chapter does not apply to the holding, by an INMA firm, of relevant investments under an arrangement described in Chapter 7 (Use of customers' investments as collateral).

(3) This Chapter does not apply to an INMA firm when it safeguards and administers a relevant investment for another firm in the same corporate group, unless the other firm has notified the INMA firm, in writing, that the other firm holds the investment for an entity that is not part of the group.

Note For audit and reporting requirements in relation to custody services—see GENE, rules 9.5.1 and 9.5.3.

6.1.2 Chapter 6 application to QFC schemes

(1) This Chapter applies to:

(a) the independent entity of a QFC scheme that is not a private placement scheme, and

(b) the operator of a QFC scheme that is a private placement scheme;

in relation to the safeguarding of the scheme property as if:

(c) a reference to the ***customer*** were a reference to the scheme; and

(d) all other necessary changes were made.

(2) This Chapter does not apply in any other way to the operator of a QFC scheme in relation to the scheme.

6.1.3 Eligible custodian

(1) A person is an ***eligible custodian*** in relation to a customer of an INMA firm if the person is:

(a) an INMA firm that has an authorisation for providing custody services;

(b) an eligible bank;

(c) an entity to which subrule (2) applies;

(d) a central securities depository to which subrule (3) applies;

(e) an eligible clearing house;

Note ***Eligible clearing house*** is defined in subrule (5).

(f) an entity to which subrule (4) applies.

(2) This subrule applies to an entity if:

(a) it is regulated by an overseas regulator;

(b) the Regulatory Authority has not, by notice published on an approved website, declared that this subrule does not apply to the regulator's jurisdiction;

(c) the entity's regulatory authorisation (however described) in the jurisdiction covers carrying on activities that are broadly equivalent to providing custody services;

(d) the entity is required to prepare audited accounts;

(e) it has assets of QR1.8 million or more;

Note The specification of a sum of money in a particular currency is also taken to specify the equivalent sum in any other currency at the relevant time—see rule 3.3.2.

(f) it has a surplus of revenue over expenditure for its last 2 financial years; and

(g) its latest annual audit report is not materially qualified.

Note ***Approved website***, ***jurisdiction*** and ***overseas regulator*** are defined in the glossary.

(3) This subrule applies to a central securities depository if:

(a) its custody services are regulated by an overseas regulator;

(b) the Regulatory Authority has not, by notice published on an approved website, declared that this subrule does not apply to the regulator's jurisdiction;

(c) the depository is required to prepare audited accounts;

(d) it has assets of QR35 million or more;

(e) it has a surplus of revenue over expenditure for its last 2 financial years; and

(f) its latest annual audit report is not materially qualified.

(4) This subrule applies to an entity in relation to a customer of an INMA firm if:

(a) the entity is not a person mentioned in subrule (1) (a) to (e);

(b) the entity's business includes the provision of custodial services;

(c) the firm believes, on reasonable grounds, that:

(i) it is not feasible for the firm to use an entity mentioned in any of subrules (1) (a) to (e) to provide custodial services for the customer;

(ii) the entity can provide appropriate custodial services for the customer; and

(iii) it is in the customer's best interests for the firm to use the entity to provide custodial services for the customer; and

(d) the firm's use of the entity to provide custodial services for the customer otherwise complies with these rules.

(5) A clearing house is an ***eligible clearing house*** if:

(a) transactions on a regulated exchange may be cleared through it;

(b) it is incorporated or otherwise established in a jurisdiction outside the QFC; and

(c) the Regulatory Authority has not, by notice published on an approved website, declared that this subrule does not apply to the jurisdiction.

Note ***Regulated exchange*** is defined in the glossary.

6.1.4 Custody investment

A ***custody investment*** of an INMA firm is a relevant investment, belonging to a customer, for which the firm provides custody services, or arranges the provision of custody services, in or from the QFC.

6.1.5 Holding custody investments

(1) An INMA firm ***holds or controls*** custody investments if:

(a) the investments are directly held by the firm;

(b) they are held in an account in the firm's name; or

(c) they are held by a person, or in an account in the name of a person, controlled by the firm.

(2) For subrule (1):

(a) a person ***holds*** a custody investment if the document of title for the investment is in the person's physical possession, or legal title to the investment is registered in the person's name;

(b) a person ***controls*** an account if the account is operated in accordance with the person's instructions; and

(c) an INMA firm ***controls*** a person if the person is inclined to act in accordance with the firm's instructions.

6.1.6 Nominee

A ***nominee*** is a body corporate whose business consists solely of acting as a nominee holder of relevant investments or other property.

6.1.7 Investments not treated as custody investments—delivery-versus-payment transactions

(1) An INMA firm need not treat a customer's relevant investment as a custody investment in relation to a delivery-versus-payment transaction if:

(a) in the case of a customer's purchase—the investment is to be due to the customer within 1 business day after the customer fulfils a payment obligation; or

(b) in the case of a customer's sale—the investment is to be due to the firm within 1 business day after a payment obligation is fulfilled;

unless the delivery or payment by the firm does not occur by the close of business within 3 business days after the date of payment or delivery of the investment by the customer.

(2) Until a transaction described in subrule (1) is settled, an INMA firm may segregate money (in accordance with the client money protection rules) instead of the investment.

6.1.8 Investments not treated as custody investments—investments held temporarily for customers

An INMA firm need not treat a relevant investment as a custody investment when it holds the investment temporarily on behalf of a customer, if the firm:

(a) keeps the investment secure, records it as belonging to that customer, and forwards it to the customer or in accordance with the customer's instructions, as soon as practicable after receiving it;

(b) retains it for no longer than the period that the firm has determined (after taking reasonable steps) to be 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 of all the investments handled in accordance with paragraphs (a) and (b), the details of the customer and any action that the firm has taken.

6.1.9 Responsibility for nominees

An INMA firm is responsible to its customers for the actions of any nominee controlled by the firm in relation to any requirement of this Chapter.

6.1.10 Systems and controls in relation to custody investments

(1) An INMA firm that holds or controls custody investments must have systems and controls:

(a) to ensure that those investments are properly safeguarded;

(b) to ensure that those investments are identifiable and secure at all times; and

(c) to demonstrate to its auditors and the Regulatory Authority that it complies with this Chapter.

(2) An INMA firm that provides custody services must ensure that custody investments are recorded, registered and held appropriately to safeguard and control them.

(3) Except as permitted in these rules or as required by law, an INMA firm that provides custody services must record, register and hold custody investments separately from its own assets.

(4) To the extent practicable, an INMA firm must appropriately register or record legal title to a custody investment in the name of:

(a) the customer concerned;

(b) a nominee controlled by the firm, if the customer's beneficial entitlement to the investment is properly recorded in the nominee's records;

(c) a nominee controlled by an eligible custodian;

(d) an eligible custodian, if:

(i) the investment is subject to the law or market practice of a jurisdiction outside the QFC, and the firm has taken reasonable steps to determine either that it is in the customer's best interests to register or record it in that way, or that (because of that law or market practice) it is not feasible to do otherwise; and

(ii) the firm has notified the customer in writing;

(e) the firm, if:

(i) the firm has determined on reasonable grounds, having regard to the law and market practice to which the investment is subject, either that it is in the customer's best interests for the investment to be registered or recorded in the name of the firm or that it is not feasible to do otherwise; and

(ii) the firm has notified the customer in accordance with rule 6.1.18(1)(i); or

(f) any other person, in accordance with the customer's specific written instruction, if the firm has notified the customer in accordance with rule 6.1.18(1)(j).

6.1.11 Control of documents of title

An INMA firm may hold a document of title to a custody investment either in the firm's physical possession or with an eligible custodian, or in a nominee controlled by an eligible custodian, in an account designated for customers' custody investments.

6.1.12 Use of eligible custodians

(1) An INMA firm may hold a custody investment with an eligible custodian if (and only if):

(a) under the laws applying to the investment, it will be recognised as segregated from, and will not form part of, the firm's assets in its insolvency; and

(b) after making the assessment described in rule 6.1.13, the firm is satisfied that the custodian is a suitable person to hold the investment.

(2) The INMA firm must have systems and controls to ensure that:

(a) the requirements of subrule (1) (a) continue to be met; and

(b) the assessment made for subrule (1) (b) remains correct.

6.1.13 Assessing whether an eligible custodian is suitable

(1) When assessing the suitability of an eligible custodian, an INMA firm must ensure that the custodian will provide protection equivalent to the protection conferred by this Chapter.

(2) When assessing the suitability of an eligible custodian, an INMA firm must have regard to all the relevant circumstances including the following:

(a) the custodian's expertise and market reputation;

(b) on a continuing basis, the quality of services that the custodian provides to the firm;

(c) the custodian's arrangements for holding and safeguarding custody investments and its use of agents and service providers;

(d) the custodian's credit rating, capital and financial resources;

(e) the regulatory and insolvency regimes of the jurisdiction in which the custodian is located;

(f) the custodian's regulatory status and history.

6.1.14 Acknowledgement by eligible custodian

Before an INMA firm permits custody investments to be held by an eligible custodian or a nominee controlled by an eligible custodian, the firm must obtain a written acknowledgement from the custodian stating:

(a) that the title of the account in which the investments will be held sufficiently distinguishes it from any other account containing

assets that beneficially belong to the firm or its nominee, and is in the form requested by the firm;

(b) that investments will be credited to, and withdrawn from, the account only in accordance with the firm's instructions;

(c) that the custodian will hold or record the investments separately from assets belonging to the custodian and will ensure that any sub-custodian that it uses does the same;

(d) that the custodian will use due skill, care and diligence in the selection of any sub-custodian that it uses;

(e) the arrangements for recording and registering the investments, claiming and receiving dividends and other entitlements and interest, and giving and receiving instructions;

(f) that the custodian will give a statement to the firm at stated intervals setting out the description and amounts of investments in the account;

(g) that the 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 investments in the account for any sum owed to it on any other account of the firm (except for any charges relating to the administration or safekeeping of the investments in the account); and

(h) the extent of the custodian's liability in the event of the loss of an investment caused by the fraud, wilful default or negligence of the custodian or its agent.

6.1.15 Use of customers' investments for firms' own purposes

(1) Subject to subrule (2), an INMA firm that provides custody services must not use a customer's custody investment for its own purpose or that of another person.

(2) An INMA firm may use a customer's custody investment for its own purposes or those of another person, if it has systems and controls to ensure that:

(a) it obtains the customer's prior written permission;

(b) adequate records are maintained to protect custody investments that are applied as collateral or used for stock lending;

(c) equivalent assets can be returned to the customer; and

(d) the customer is not disadvantaged by the use of the investment.

Guidance

The permission need not be specific but may be a general permission given as part of the customer's acceptance of an appropriate statement (about the use of the customer's custody investments) in the firm's terms of business.

Note Under COND, Chapter 4, an INMA firm must give a customer a statement, in writing, of the terms and conditions on which the firm will conduct investment and advisory business for the customer. In those Rules such a statement is called the firm's *terms of business*. See that Chapter for detailed requirements.

6.1.16 Collateral for customers' investments used for stock lending

(1) If a custody investment belonging to a customer is used for stock lending, the INMA firm concerned must ensure that:

(a) the borrower provides collateral, in the form of readily realisable investments, in favour of the customer;

(b) the firm monitors the current realisable values of the investment and the collateral daily; and

(c) if the current realisable value of the collateral falls below that of the investment, the firm provides collateral (in the form of readily realisable investments) to make up the difference, unless the customer agrees otherwise in writing.

(2) In this rule:

debt instrument, ***securities receipt***, ***share***, and ***warrant*** have the respective meanings given by FSR, article 110 and Schedule 3, Part 3.

Note ***Unit*** (in a collective investment scheme) is defined in the glossary.

readily realisable investment means:

(a) cash;

(b) a demand deposit;

(c) money deposited in a bank and available for immediate withdrawal;

(d) a short-term, highly liquid investment that is readily convertible to a known amount of cash and is subject to an insignificant risk of change in value;

(e) a debt instrument that is issued by or on behalf of a jurisdiction, or a public, regional or local authority of a jurisdiction, and is denominated in the jurisdiction's currency;

(f) any other security admitted to official listing on, or regularly traded on or under the rules of, a regulated exchange; or

(g) a newly issued security that can reasonably be expected to fall within paragraph (f) when trading in it starts.

Note ***Regulated exchange*** is defined in the glossary.

security means a debt instrument, a securities receipt, a share, a unit in a collective investment scheme or a warrant.

6.1.17 Notifying customers if investments to be held outside QFC

(1) This rule applies if:

(a) an INMA firm is to arrange the provision of custody services for a customer; and

(b) the customer's investments will or may be held outside the QFC.

(2) The firm must notify the customer in writing that:

(a) the investments may be held outside the QFC; and

(b) the market practices and the insolvency and legal regime may differ from the practices and regime in the QFC.

(3) The notification may be in the firm's terms of business.

6.1.18 Notifying customers of terms of custody

(1) Before an INMA firm provides custody services to a customer, it must notify the customer in writing:

(a) of the arrangements for recording and registering custody investments, claiming and receiving dividends and other entitlements and interest, and giving and receiving instructions relating to the investments concerned;

(b) of the firm's obligations to the customer in relation to exercising the customer's rights in relation to the investments;

(c) of the basis on which, and any terms governing the way in which, the investments will be held, including any rights that the firm may have to realise those investments if the customer defaults;

(d) how, and how often, the firm will report to the customer in relation to the investments;

(e) if the firm intends to mix the customer's investments with those of other customers:

(i) a statement of that fact; and

(ii) if the customer is a retail customer:

(A) that customers' individual entitlements may not be identifiable by separate certificates or other physical documents, or an equivalent electronic record; and

(B) that if a liquidator, receiver or administrator, or a trustee in bankruptcy, is appointed to the firm, and a deficiency is found in customers' custody investments, each customer may have to bear a share

of the deficiency in proportion to that customer's original share of the investments in the account;

(f) if the customer's investments may be held outside the QFC, a statement of that fact and a statement that the market practices, and the insolvency and legal regime, in that jurisdiction may differ from the practices and regime in the QFC;

(g) if the firm holds or intends to hold custody investments in an account with an eligible custodian in the same corporate group as the firm, a statement of that fact;

(h) the extent of the firm's liability in the event of default by a nominee controlled by the firm or an eligible custodian;

(i) if legal title to the investments will be registered or recorded in the name of the firm, a statement of that fact; and

(j) if the customer has instructed the firm about holding, registering or recording a custody investment under rule 6.1.10(4)(f) (Systems and controls in relation to custody investments)—that the consequences of doing so are at the customer's own risk, unless the firm has agreed otherwise.

(2) In the case of a customer that is a retail customer, the firm must not register or record legal title to the customer's investments in the firm's name unless the firm has obtained the customer's written consent and has notified the customer that:

(a) the investments will be or may be registered or recorded in the firm's name;

(b) as a result, the investments may not be segregated from the firm's investments; and

(c) in the event of the appointment of a liquidator, receiver or administrator, or trustee in bankruptcy, to the firm, the customer's assets may not be as well protected from claims made on behalf of the general creditors of the firm.

(3) A notification for subrule (1) or (2) may be in the firm's terms of business.

6.1.19 No exclusion of liability for nominee's negligence or fraud

An INMA firm must not exclude liability for the negligence, wilful default or fraud of a nominee controlled by the firm.

6.1.20 Periodic custody investment statements to customers

(1) An INMA firm that provides custody services for a customer must prepare, and must send to the customer, periodic statements listing the customer's custody investments.

(2) Each statement must be prepared as at a date (the ***reporting date***) that is not more than:

(a) 6 months after the previous statement; or

(b) if another interval between statements is agreed with the customer—the agreed interval after the previous statement.

(3) Each statement must be sent to the customer within 1 month after the reporting date.

(4) The firm must send each statement directly to the customer and not to another person, unless the customer has given written instructions requiring or allowing the firm to send the statement to the other person.

6.1.21 When periodic custody statements need not be sent to customer

(1) If a customer of an INMA firm is ordinarily resident outside the State of Qatar, the firm may, with the customer's prior written agreement, retain the statements required to be sent to the customer under rule 6.1.20.

(2) Statements retained in accordance with subrule (1) must be held by an individual approved by the Regulatory Authority to carry out the compliance oversight function (within the meaning given by CTRL, rule 4.1.6) for the firm.

6.1.22 Reconciliations to be carried out

(1) An INMA firm that provides custody services:

(a) at least once every month—must reconcile its records of customers' custody investments held with eligible custodians with monthly statements received from those custodians;

(b) at least every 6 months—must count every custody investment physically held by the firm or a nominee controlled by the firm, and reconcile the result of that count with the firm's records; and

(c) at least every 6 months—must reconcile the firm's records of each customer's holdings with the firm's record of the location of custody investments.

(2) An INMA firm must carry out a reconciliation required by subrule (1) within 10 business days after the date to which the reconciliation relates.

6.1.23 Duties to be separated

An INMA firm must maintain a clear separation of duties to ensure that employees responsible for the production or maintenance of the records to be reconciled do not carry out the reconciliations required by rule 6.1.22.

6.1.24 Review of reconciliations

(1) A reconciliation carried out by an INMA firm in accordance with rule 6.1.22 must be reviewed by an adequately senior employee of the firm.

(2) The employee must state in writing whether the reconciliation has been carried out in accordance with these rules.

6.1.25 Correcting discrepancies in reconciliations

An INMA firm must promptly correct any discrepancies that are discovered, and must make good, or provide the equivalent of, any discrepancy for which there are reasonable grounds to conclude that the firm is responsible.

6.1.26 Notice to be given of certain significant discrepancies

(1) This rule applies if:

(a) in carrying out a reconciliation under rule 6.1.22, an INMA firm discovers a significant discrepancy; and

(b) the discrepancy is not rectified by the end of the next business day after the day on which it is discovered.

(2) The firm must notify the Regulatory Authority of the discrepancy immediately, but by no later than the second business day after the day on which it is discovered.

(3) In this rule:

significant discrepancy includes discrepancies that have the cumulative effect of being significant.

6.1.27 Record-keeping

(1) An INMA firm must maintain records that enable it:

(a) to demonstrate to its auditors and the Regulatory Authority that it complies with this Chapter; and

(b) to demonstrate and explain all entries of custody investments held or controlled in accordance with this Chapter.

(2) An INMA firm must maintain a master list of every account that it holds with an eligible custodian. The master list must set out:

(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 on which it was opened and if applicable, the date on which it was closed.

(3) The details of an account must be documented and maintained in the master list for at least 6 years after the account is closed.

(4) An INMA firm must maintain records of every agreement with an eligible custodian and any instruction given by the firm to a custodian under such an agreement.

Chapter 7 Use of customers' investments as collateral

7.1.1 Application of Chapter 7

(1) This Chapter applies to an INMA firm that receives or holds relevant investments of a customer to secure the customer's obligations to the firm in the course of, or in connection with, the firm's conducting investment and advisory business, if:

(a) either:

(i) the customer's entire legal and beneficial interest in those investments has been transferred to the firm; or

(ii) the firm has a right to use those investments as if the customer's entire legal and beneficial interest in them had been transferred to the firm; and

(b) the firm is obliged to return equivalent investments to the customer when the customer's obligations to the firm are satisfied.

(2) If an INMA firm receives or holds a relevant investment under an arrangement described in subrule (1)(a)(ii) but has not yet exercised its right to use the investment, this Chapter does not apply in relation to the investment until after the firm has exercised its right to use it.

(3) This Chapter does not apply in relation to an investment in which an INMA firm's interest is a bare security interest. An interest is a ***bare security interest*** if it gives the firm the right to realise the investment only on the customer's default but no right to use it in other circumstances.

(4) If under subrule (2) or (3) this Chapter does not apply in relation to an investment, the INMA firm concerned:

(a) must treat the investment as a custody investment; and

(b) must comply with Chapter 6 in relation to it.

Note For the meaning of *custody investment*—see rule 6.1.4.

7.1.2 Adequate records to be kept

(1) If an INMA firm receives or holds relevant investments of a customer under an arrangement described in rule 7.1.1, the firm must keep adequate records to enable it to meet any future obligations to the customer in relation to the investments, including the obligation to return equivalent relevant investments to the customer.

(2) However, if the investments are received under an arrangement described in rule 7.1.1(1)(a)(ii), subrule (1) applies only if the firm has exercised its right to use them as if the customer's entire legal and beneficial interest in them had been transferred to the firm.

7.1.3 Periodic statements to customer

(1) An INMA firm that holds relevant investments of a customer under an arrangement described in rule 7.1.1 must prepare, and send to the customer, periodic statements listing the investments and their market values.

(2) Each statement must be prepared as at a date (the ***reporting date***) that is not more than:

(a) 6 months after the last statement; or

(b) if another interval between statements is agreed with the customer—the agreed interval after the last statement.

(3) Each statement must be sent to the customer within 1 month after the reporting date.

(4) The firm must send each statement directly to the customer and not to another person, unless it has written instructions from the customer requiring or allowing it to send the statement to the other person.

Chapter 8 Client mandates

8.1.1 Client mandates—systems and controls

(1) In this Chapter:

mandate means a written authority from an investment business firm's customer under which the firm may control assets or liabilities of the customer in the course of, or in connection with, the firm's investment business.

Examples of authority

1 authority for direct debit of a bank account

2 authority to charge a credit card.

(2) If an investment business firm holds 1 or more mandates, it must establish appropriate systems and controls in relation to its use of the mandates to prevent the misuse of the authority given by the mandates.

(3) The systems and controls must include the following:

(a) an up-to-date list of the firm's mandates and all the conditions and restrictions on the use of each mandate;

(b) a record of every transaction entered into using a mandate;

(c) appropriate controls to ensure that each transaction is within the scope of the authority given by the relevant mandate;

(d) a record of details of the procedures and authorities for giving and receiving instructions under the mandates;

(e) taking all reasonable steps to ensure that anyone who is, or is likely to be, required to give or receive instructions under a mandate is fully aware of its terms, including:

(i) the procedures and authorities referred to in paragraph (d); and

(ii) all the conditions and restrictions (if any) on its use.

8.1.2 Chapter 8 application to QFC schemes

In relation to mandates, this Chapter applies to the independent entity of a QFC scheme that is not a private placement scheme, and to the operator of a QFC scheme that is a private placement scheme, as if:

(a) a reference to the ***customer*** were a reference to the QFC scheme; and

(b) all other necessary changes were made.

Chapter 9 Islamic INMA firms

9.1.1 Introduction

(1) This Chapter describes the nature of restricted PSIAs and sets out the responsibilities of Islamic INMA firms in relation to policies, warnings, provisions, reserves, terms of business and financial and other periodic statements. An ***Islamic INMA firm*** is an INMA firm whose authorisation includes a condition that the whole of the firm's business must be conducted in accordance with Shari'a.

(2) Because an Islamic INMA firm is an Islamic financial institution, it must comply with the *Islamic Finance Rules 2005*.

Note Interest-bearing deposits are not permitted by Shari'a, so Islamic financial institutions typically raise funds through PSIAs and other Shari'a-compliant sources of funding.

9.1.2 Profit-sharing investment accounts

(1) A ***profit-sharing investment account*** (or ***PSIA***) is an account, portfolio or fund that satisfies the following conditions:

(a) it is managed by an authorised firm in accordance with Shari'a and is held out as such;

(b) under a management agreement with the firm, the investment account holder (or ***IAH***) concerned and the firm agree to share any profit in a specified ratio, and the IAH agrees to bear any loss not caused by the firm's negligence, misconduct or breach of contract.

(2) A PSIA may be restricted or unrestricted. A ***restricted PSIA*** is a PSIA that is subject to a restriction as to where, how or for what purpose the investment funds may be invested.

Note 1 For the Rules relating to unrestricted PSIAs—see BANK.

Note 2 For guidance on the treatment of PSIAs as restricted or unrestricted—see paragraphs 12 and 13 of AAOIFI's Statement of Concepts of Financial

Accounting for Islamic Banks and Financial Institutions. See also Appendix D of Financial Accounting Standard FAS 5.

(3) In this Chapter:

owner of a PSIA includes a PSIA manager that owns the PSIA that it manages.

Note The PSIA manager is generally the owner of the PSIA, but an owner can outsource the management of the PSIA to another person.

9.1.3 Policies—PSIAs

An Islamic INMA firm's policies must include the following:

(a) how to ensure that PSIAs are managed in accordance with their IAHs' instructions;

(b) how to ensure that the funds of PSIAs are invested in accordance with the firm's terms of business;

(c) the priority of the investment of the PSIA owners' funds and those of the IAHs;

(d) how the interests of the IAHs are safeguarded;

(e) the basis for allocating expenses and profits or losses to IAHs;

(f) how provisions and reserves against equity and assets will be applied;

(g) to whom those provisions and reserves would revert in the event of a write-off or recovery;

(h) how liquidity mismatch will be monitored;

(i) how the value of the PSIAs' assets will be monitored;

(j) how any losses incurred as a result of negligence, misconduct or breach of contract on the part of the firm will be dealt with.

9.1.4 PSIA managers' responsibilities

(1) An Islamic INMA firm that manages restricted PSIAs must warn a prospective IAH in writing that:

(a) the IAH bears the risk of loss to the extent of the IAH's investment; and

(b) the IAH would not be able recover that loss from the firm, except in case of negligence, misconduct or breach of contract on the part of the firm.

(2) In accordance with AAOIFI FAS 11, such a firm must maintain adequate provisions and reserves against equity and assets.

9.1.5 Terms of business

An Islamic INMA firm that manages a restricted PSIA must ensure that the following information is included in the terms of business given to an IAH:

(a) how and by whom the funds of the IAH will be managed and invested;

(b) the PSIA's investment objectives and details of its policy on diversification;

(c) the basis for allocating profits and losses between the owner and the IAH;

(d) a summary of the policies for valuing the PSIA's assets;

(e) a summary of the policies for transferring funds to and from any profit equalisation reserve or investment risk reserve;

(f) particulars of the management of the PSIA;

(g) particulars of the management of any other person to whom the owner has outsourced, or will outsource, the management of the PSIA, including:

(i) the person's name;

(ii) the person's regulatory status; and

(iii) details of the arrangement;

(h) details of any arrangement for early withdrawal, redemption or other exit and any costs to an IAH as a result;

(i) confirmation of the IAH's investment objectives;

(j) how the IAH's investment will be segregated from the manager's funds and from any claims by the firm's creditors;

(k) whether funds from the PSIA will be mixed with the funds of another PSIA;

(l) any applicable charges and the basis on which such charges will be calculated;

(m) any fees that the firm can deduct from the profits of the PSIA.

9.1.6 Financial statements—specific disclosures

(1) An Islamic INMA firm that manages restricted PSIAs must ensure that its financial statements contain the following disclosures:

(a) the role and authority of the Shari'a supervisory board in overseeing the manager's business;

(b) the method used in the calculation of the *zakat* base;

(c) if *zakat* has been paid, the amount that has been paid;

(d) if *zakat* has not been paid, information to allow an IAH or prospective IAH to compute its liability to *zakat*.

(2) The financial statements must also contain the following disclosures in relation to each PSIA managed by the firm:

(a) an analysis of its income according to types of investments and their financing;

(b) the basis for allocating profits between the owner and IAHs;

(c) the equity of the IAHs at the end of the reporting period;

(d) the basis for determining any profit equalisation reserve or investment risk reserve;

(e) the changes that have occurred in any of those reserves during the reporting period;

(f) to whom any remaining balances of any of those reserves is attributable in the event of liquidation.

(3) Any deductions by the firm from its share of income, and any expenses borne by the firm on behalf of the IAHs, as a contribution

to the income of IAHs, must also be disclosed in the firm's financial statements if the contribution is significant.

9.1.7 Periodic statements

(1) An Islamic INMA firm that manages a restricted PSIA must give an IAH a periodic statement about the PSIA at intervals agreed with the IAH. The agreed interval must not be longer than 6 months.

(2) The firm must ensure that the periodic statement contains the following information as at the end of the period covered by the statement:

(a) the number, description and value of investments held by the PSIA;

(b) the amount of cash held by the PSIA;

(c) details of applicable charges (including any deductions of fees that the firm is allowed to deduct from the profits of the PSIA) and the basis on which the charges are calculated;

(d) the total of any dividends and other benefits received by the firm for the PSIA;

(e) the total amount, and particulars of all investments transferred into or out of the PSIA;

(f) details of the performance of the IAH's investment;

(g) the allocation of profit between the owner and the IAH;

(h) any changes to the investment strategies that could affect the IAH's investment.

9.1.8 Displaced commercial risk

Note These rules, the instructions for preparing returns and the returns themselves do not (yet) have provisions on how to deal with this risk. Those provisions are to be inserted in the second and third phases of these rules or included in a separate set of Rules on Islamic finance.

Chapter 10 Transitional

10.1.1 Definitions for Chapter 10

modification means a declaration by the Regulatory Authority under FSR, article 16 (1) (a).

PIIB means the *Investment and Banking Business Rules 2005* (as in force immediately before 1 January 2015).

PIIB category 3 and ***PIIB category 4*** have the same respective meanings as in PIIB.

waiver means a declaration by the authority under FSR, article 16 (1) (b).

10.1.2 Authorised firms to remain authorised

An entity that was an authorised firm in PIIB category 3 or PIIB category 4 immediately before 1 January 2015 continues to be an authorised firm. The firm's authorisation (including any condition) continues in effect according to its terms.

10.1.3 Modifications and waivers

(1) A modification of a provision of PIIB that was in effect immediately before 1 January 2015 continues to have effect, according to its terms, as a modification of the provision of these rules corresponding as nearly as possible to the provision of PIIB.

(2) A waiver of a provision of PIIB (other than a waiver in relation to an authorised firm that is a branch, the effect of which was that the firm was not required to hold capital) that was in effect immediately before 1 January 2015 continues to have effect, according to its terms, as a

waiver of the provision of these rules corresponding as nearly as possible to the provision of PIIB.

Guidance

A waiver the effect of which was that an authorised firm was not required to hold capital lapsed on 1 January 2015 if the firm is a branch, because there is no requirement under these rules for a branch to hold capital.

10.1.4 Power of Regulatory Authority not diminished

Nothing in this Chapter prevents the Regulatory Authority from withdrawing a firm's authorisation or revoking a condition, waiver or modification.

Schedule 1 Guidance about risk management

(see rule 4.2.1)

Part S1.1 Introduction

This guidance provides detail on what the Regulatory Authority expects to see in an INMA firm's risk management policy. It has been prepared to assist the directors and senior managers of INMA firms and others concerned in applying these rules. The authority recognises that the exact content of each firm's risk management policy will be determined by what is appropriate in the light of the nature, scale and complexity of the firm's business.

Part S1.2 Risks to be addressed in risk management policy

S1.2.1 Operational risk

(1) ***Operational risk*** is the risk of loss resulting from:

(a) inadequate or failed internal processes, people and systems; or

(b) external events.

(2) The management of operational risk typically addresses legal risk, fraud risk, economic and political risk, business continuity risk, technology risk, human resources risk, outsourcing risk, project management risk and strategic risk.

S1.2.2 Reputational risk

(1) ***Reputational risk*** is the risk of loss resulting from damage to a firm's good reputation.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating reputational risk. The policy should include:

(a) processes for identifying events that might lead to reputational damage, the likelihood of those events occurring, and their consequences; and

(b) procedures for handling such events, and for mitigating reputational damage.

S1.2.3 Liquidity risk

(1) ***Liquidity risk*** is the risk of not having sufficient cash or liquid assets to meet cash outflows as they fall due.

(2) An INMA firm's risk management policy should include processes and controls to monitor the liquidity and realisability of the firm's assets and the level of liquid assets it holds, to ensure that it complies at all times with the net liquid assets requirement in these rules.

Note For that requirement—see rule 3.3.4.

Part S1.3 Risks to be addressed in managing operational risk

S1.3.1 Legal risk

(1) ***Legal risk*** is the risk of loss resulting from:

(a) regulatory or legal action;

(b) disputes; or

(c) failure to comply with, or the inadequate management of, legal or regulatory obligations.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating legal risk. The policy should include:

(a) processes for identifying events that might generate legal risk (for example, new products or processes, new documentation), the likelihood of those events occurring and their consequences; and

(b) procedures to ensure that:

(i) all contractual, legal, regulatory and other documentation is accurate and complete;

(ii) the firm complies with all its legal, regulatory, contractual and prudential requirements and obligations; and

(iii) the firm's insurances (for example, professional indemnity insurance) are renewed in good time and remain effective.

S1.3.2 Fraud risk

(1) ***Fraud risk*** is the risk of loss from:

(a) unauthorised activities such as those that breach the controls, procedures, limits and other restrictions in an INMA firm's policies and procedures or legal or regulatory requirements;

(b) deceptive acts or omissions intended to gain advantage for the parties committing the acts or other parties; or

(c) intentional acts undertaken for personal gain or to tamper with or manipulate the financial or operational aspects of the firm's business.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating fraud risk. The policy should include:

(a) internal controls and mitigation strategies;

(b) segregation of duties at an operational level and in relation to functional reporting lines;

(c) financial accounting controls;

(d) staff training and awareness; and

(e) appropriate processes for monitoring compliance with the firm's procedures, controls, limits and other restrictions.

S1.3.3 Economic and political risk

(1) ***Economic and political risk*** is the risk of loss resulting from factors such as the following:

(a) macroeconomic policy, government regulation and social policy;

(b) events related to political instability.

(2) An INMA firm's risk management policy should include a process for identifying and assessing how political and economic factors might affect its business and its ability to meet its liabilities as they fall due, and procedures for managing and mitigating that risk.

S1.3.4 Business continuity risk

(1) ***Business continuity risk*** is the risk of loss (both financial and non-financial) resulting from disruptions to critical business operations. ***Critical business operations*** are the business functions, resources and infrastructure that would, if disrupted, have a significant effect on a firm's business functions, reputation, profitability and customers.

Note CTRL, r 2.2.8 (3), requires an INMA firm's governing body to review its business continuity procedures at least once every 18 months.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating business continuity risk. The policy should include::

(a) processes for identifying and analysing:

(i) events that might lead to a disruption in business continuity;

(ii) the likelihood of those events occurring;

(iii) the processes most at risk; and

(iv) the consequences of those events;

(b) a plan (***business continuity plan*** or ***BCP***) describing:

(i) objectives and procedures for crisis management and recovery to minimise the consequences from the disruption of its business;

(ii) detailed procedures for carrying out the BCP, including manual processes, the activation of an off-site recovery site (if needed), the persons responsible for activating the BCP, and pre-assigned responsibilities of staff;

(iii) a communications strategy and contact information for relevant staff, suppliers, regulators, market authorities, major customers, the media and other key people;

(iv) a schedule of critical systems covered by the BCP and the timeframe for restoring those systems;

(v) procedures for staff awareness and training on all aspects of the BCP; and

(vi) procedures for regular (at least annual) testing, review and reporting on the BCP to the governing body and senior management; and

(c) procedures for backing up important data regularly and storing the data off-site.

S1.3.5 Technology risk

(1) ***Technology risk*** is the risk of loss resulting from inadequate or failed technology used in business operations, or the unauthorised use of such technology.

(2) An INMA firm's risk management policy should include processes and procedures to maintain the secure and effective use of technology in its business operations and for identifying, managing and mitigating technology risk.

S1.3.6 Human resources risk

(1) ***Human resources risk*** is the risk of loss resulting from inadequate human resources.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, managing and mitigating human resources risk. The policy should include processes and procedures for:

(a) risk identification and assessment of the firm's human resources requirements;

(b) ensuring that it has an appropriate number of suitably qualified and trained staff in accordance with the nature, scale, and complexity of its business;

(c) managing and mitigating the loss of key personnel; and

(d) monitoring and supervising its staff.

S1.3.7 Outsourcing risk

(1) ***Outsourcing risk*** is the risk of loss resulting from the non-performance, or poor performance, by a service provider of a function outsourced to the service provider under a material outsourcing arrangement (within the meaning of CTRL).

Note 1 For the meaning of ***material outsourcing***—see CTRL, glossary.

Note 2 An INMA firm must assess the risks that an outsourcing arrangement poses to its business (see CTRL, r 5.2.1 (2) (b)) and the governing body of the firm must review, at least once every year, the firm's outsourcing arrangements for assessing the feasibility of a proposed outsourcing arrangement and the risks that the outsourcing poses to the firm's business (see CTRL, r 5.1.2 (4) (a) (i)).

(2) Outsourcing can bring significant benefits in terms of efficiency, cost reduction and risk management. However, the process of implementing outsourcing arrangements and the outsourcing relationship itself may expose an INMA firm to additional risk. Therefore, it is important that INMA firms supervise outsourced activities.

Note CTRL, r 5.2.3 (1) requires an INMA firm to inform the Regulatory Authority before entering into a material outsourcing arrangement.

(3) Intra-group outsourcing might be thought to be subject to lower risks than using service providers from outside a corporate group. However, it is not risk-free, and an INMA firm should still assess the associated risks and make appropriate arrangements to manage them.

(4) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating outsourcing risk. The risk management policy should include processes and procedures for:

(a) negotiating contracts for outsourcing;

(b) identifying, assessing and managing risks that may arise from the outsourcing;

(c) procedures for managing the outsourcing service providers; and

(d) mitigating any associated risks.

(5) In negotiating a contract with a service provider or in assessing an existing contract, an INMA firm should consider matters that are relevant to risk management, including the following:

(a) setting and monitoring authority limits and referral requirements;

(b) the identification and assessment of performance targets;

(c) procedures for evaluation of performance against targets;

(d) provisions for remedial action;

(e) the reporting requirements imposed on the service provider (including the content and frequency of reports);

(f) the ability of the firm and its external auditors to obtain access to the service provider and their records;

(g) the protection of intellectual property rights;

(h) the protection of customers' and the firm's confidentiality;

(i) the adequacy of any guarantees, indemnities or insurance cover that the service provider agrees to provide;

(j) the ability of the service provider to provide continuity of business;

(k) the arrangements to change, or terminate, the agreement.

S1.3.8 Project management risk

(1) ***Project management risk*** is the risk of loss resulting from projects not achieving the desired objectives or having a negative effect on the adequacy of a firm's resources.

(2) If an INMA firm is likely to be exposed to project management risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk. The policy may also set out processes and procedures for:

(a) establishing and managing a project, including setting a business case, cost-benefit analysis, stakeholder sign-offs, monitoring the project objectives, deliverables, timeframes and post-implementation review;

(b) clearly defined and appropriate authorities for project approvals and sign-offs; and

(c) clearly defined and appropriate levels of delegation of authority.

S1.3.9 Strategic risk

(1) ***Strategic risk*** is the risk of loss resulting from the pursuit of an unsuccessful business plan. Strategic risk might arise from making poor business decisions, from the substandard execution of decisions, from inadequate resource allocation, or from a failure to respond well to changes in the business environment.

(2) An INMA firm's risk management policy should include processes and procedures for identifying, assessing, managing and mitigating strategic risk.

Part S1.4 Other risks that may be addressed in risk management policy

S1.4.1 Market risk

(1) ***Market risk*** is the risk of loss resulting from adverse movement in the relative values of assets and liabilities because of changes in general market factors, such as interest rates, inflation and foreign exchange rates. ***Market risk*** includes asset-liability management risk.

(2) If an INMA firm is likely to be exposed to market risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk.

S1.4.2 Concentration risk

(1) ***Concentration risk*** is the risk of loss resulting from:

(a) large exposures to a single counterparty, market or geographical area; or

(b) exposures to large or one-off transactions.

(2) If an INMA firm is likely to be exposed to concentration risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk. The policy may set out limits for credit exposures, at individual and consolidated levels, to:

(a) single counterparties and groups of related counterparties;

(b) subsidiaries and related entities;

(c) single industries or markets; and

(d) single regions.

S1.4.3 Credit risk

(1) ***Credit risk*** is the risk of loss resulting from:

(a) default by debtors and other counterparties; and

(b) assets losing value because their credit quality has deteriorated.

(2) If an INMA firm is likely to be exposed to credit risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk.

S1.4.4 Group risk

(1) ***Group risk*** is the risk of loss resulting from membership of a corporate group or linkages with related parties. ***Related parties*** includes not only other members of a firm's corporate group but individuals who are in a position to exercise significant influence over it.

(2) Corporate group membership and linkages with related parties can be a source of both strength and weakness.

(3) If an INMA firm is likely to be exposed to group risk it should include, in its risk management policy, processes and procedures for identifying, assessing, managing and mitigating that risk.

S1.4.5 Settlement risk

(1) ***Settlement risk*** is the risk of loss resulting from a counterparty not delivering a security (or its value in cash) in accordance with an agreement to do so.

(2) If an INMA firm is likely to be exposed to settlement risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk.

S1.4.6 Valuation risk

(1) ***Valuation risk*** is the risk of loss resulting from an asset being overvalued and, when it matures or is sold, being worth less than was expected. Factors contributing to valuation risk include incomplete data, market instability, uncertainties in financial modelling and poor data analysis by the people responsible for determining the value of the asset.

(2) If an INMA firm is likely to be exposed to valuation risk, its risk management policy should include processes and procedures for identifying, assessing, managing and mitigating that risk.

Glossary

(see rule 1.1.3)

AAOIFI means the Accounting and Auditing Organisation for Islamic Financial Institutions.

accounting standards include accounting rules, principles, practices and conventions.

advising on investments means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 11.

advisory firm has the meaning given by rule.5.1.2(1).

approved representative, of an INMA firm, has the meaning given by COND, rule 2.2.3 (1).

approved website means a website that is approved under the *Interpretation and Application Rules 2005*, rule 3.1.2.

arranging credit facilities means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 7.

arranging deals in investments means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 5.

arranging the provision of custody services means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 9.

associate of an INMA firm means any other entity in the same corporate group as the firm.

authorisation means an authorisation granted under FSR, Part 5.

authorised firm (or ***firm***) means a person that has an authorisation.

BANK means the *Banking Business Prudential Rules 2014*.

branch means the local office in the QFC of a legal person incorporated outside the QFC.

business customer (of an investment business firm) has the same meaning as in COND.

business day means a day that is not a Friday, a Saturday, or a public or bank holiday in Qatar.

cheque includes a payable order of any other kind.

client bank account has the meaning given by rule 5.5.1.

client money has the meaning given by rule 5.2.2.

client money distribution rules means the provisions of Part 5.10.

client money protection rules means the provisions of Part 5.5.

CM requirement has the meaning given by rule 5.9.1.

CM resource has the meaning given by rule 5.9.1.

COLL means the *Collective Investment Schemes Rules 2010*.

collective investment scheme has the same meaning as in COLL.

COND means the *Conduct of Business Rules 2007*.

corporate group: an INMA firm's ***corporate group*** is made up of:

(a) the firm;

(b) any parent entity of the firm;

(c) any subsidiary (direct or indirect) of the firm; and

(d) any subsidiary (direct or indirect) of a parent entity of the firm.

CTRL means the *Governance and Controlled Functions Rules 2012*.

custody investment has the meaning given by rule 6.1.4.

customer of an INMA firm means a person to whom the firm provides (or intends or wishes to provide, or has provided) a service or product (whether or not the firm describes the person as a client), and includes:

(a) a business customer;

(b) a commercial customer (within the meaning given by COND, rule 1.2.4); and

(c) a retail customer.

Note ***Business customer*** and ***retail customer*** are defined in this glossary.

customer dispute resolution scheme means the Interim Customer Dispute Resolution Scheme established under COND, Chapter 8, or, if a replacement body is established by rule under FSR, article 86 (2), that body.

dealing in investments means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 4.

eligible bank has the meaning given by rule 5.2.3.

eligible custodian has the meaning given by rule 6.1.3.

eligible third party has the meaning given by rule 5.2.4.

entity means any kind of entity, and includes, for example, any person.

financial group of an INMA firm has the meaning given by rule 3.3.8(2).

firm-related distribution event has the meaning given by rule 5.10.1.

FSR means the *Financial Services Regulations*.

GENE means the *General Rules 2005*.

governing body of an entity means its board of directors, committee of management or other governing body (whatever it is called).

hold money has the meaning given by rule 5.2.1.

home financial services regulator for an entity means the regulator responsible for the prudential regulation of the entity in the jurisdiction where the entity's authorisation or licence was granted.

IAH means investment account holder of a restricted PSIA.

IFRS means the International Financial Reporting Standards, as amended and in force from time to time.

INMA firm means an authorised firm to which, under rule 1.1.4, these rules apply.

independent entity has the same meaning as in COLL.

investment and advisory business means the business of conducting, in or from the QFC, any of the activities mentioned in rule 1.1.4.

investment business firm has the meaning given by rule 5.1.2(1).

Islamic financial institution means an authorised firm whose authorisation includes a condition that the whole of the firm's business must be conducted in accordance with Shari'a.

Islamic INMA firm has the meaning given by rule 9.1.1 (1).

jurisdiction means any kind of legal jurisdiction, and includes, for example:

(a) the State of Qatar;

(b) a foreign country (whether or not an independent sovereign jurisdiction), or a state, province or other territory of such a foreign country; and

(c) the QFC or a similar jurisdiction.

legal person means an entity (other than an individual) on which the legal system of a jurisdiction confers rights and imposes duties, and includes, for example, any entity that can own, deal with or dispose of property.

managing investments means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 10.

money is any form of money of any currency, and includes a cheque.

Note ***Cheque*** includes a payable order of any other kind—see this glossary.

month means calendar month—that is, the period beginning at the start of any day of one of the 12 named months of the year and ending:

(a) at the end of the day before the corresponding day of the next named month; or

(b) if there is no corresponding day—at the end of the last day of the next named month.

non-QFC intermediary (of an INMA firm) has the meaning given by COND, rule 2.2.5 (1).

operating a collective investment scheme has the same meaning as in COLL.

operator (of a QFC scheme) has the same meaning as in COLL.

overseas regulator means a regulatory or governmental authority, body or agency outside the QFC (whether in the State of Qatar or elsewhere).

paid-up share capital, for an INMA firm that is not a company, means the equity (however described) of the members or owners of the firm.

parent entity, for a legal person (***A***), means any of the following:

(a) a legal person that holds a majority of the voting power in A;

(b) a legal person that is a member of A (whether direct or indirect, or though legal or beneficial entitlement) and alone, or together with 1 or more legal persons in the same corporate group, holds a majority of the voting power in A;

(c) a parent entity of any legal person that is a parent entity of A.

Note ***Legal person*** and ***corporate group*** are defined in this glossary.

person means:

(a) an individual (including an individual occupying an office or position from time to time); or

(b) a legal person.

private placement scheme has the same meaning as in the *Private Placement Schemes Rules 2010*.

providing custody services means the regulated activity described in FSR, Schedule 3, Part 2, paragraph 8.

providing scheme administration has the same meaning as in COLL.

PSIA means profit-sharing investment account.

QFC means Qatar Financial Centre.

QFC Authority means the Qatar Financial Centre Authority established under article 3, Law No. 7 of 2005 of the State of Qatar.

QFC bank means an authorised firm that is a deposit-taker, or an Islamic financial manager, within the respective meanings given by BANK.

QFC scheme has the same meaning as in COLL.

regulated activity means an activity that is a regulated activity under FSR.

regulated exchange means an exchange:

(a) that is incorporated or otherwise established in a jurisdiction outside the QFC; and

(b) that is regulated as an exchange by an overseas regulator in that jurisdiction.

Regulatory Authority means the Qatar Financial Centre Regulatory Authority.

relevant investments: investments of the following kinds (in each case, within the meaning given in FSR, Schedule 3, Part 3), and rights in such investments, are relevant investments:

(a) shares;

(b) debt instruments;

(c) warrants;

(d) securities receipts;

(e) units in collective investment schemes;

(f) options;

(g) futures;

(h) contracts for differences.

restricted PSIA has the meaning given by rule 9.1.2(2).

retail customer (of an INMA firm) means a customer of the firm who is neither a business customer of the firm nor a market counterparty.

Rules means rules made by the Regulatory Authority under FSR, article 15 (1), and includes:

(a) any standard, principle or code of practice made by the authority; and

(b) any other instrument made or in force under any Rules.

scheme property has the same meaning as in COLL.

shortfall, in relation to a calculation under rule 5.9.1, is the amount by which an INMA firm's CM resource is less than its CM requirement.

Note ***CM resource*** and ***CM requirement*** are defined in rule 5.9.1 and this glossary.

stock lending means an arrangement between a person (the ***borrower***) and another person (the ***lender***) under which:

(a) the lender transfers securities to the borrower otherwise than by way of sale; and

(b) a requirement is imposed on the borrower to transfer back to the lender, otherwise than by way of sale, securities in the same quantity, with the same rights, and of the same type and nominal value, as the transferred securities (or, if agreed between the borrower and lender, assets into which the transferred securities have been transformed following a stock split, consolidation, conversion, merger, takeover, redemption or similar event).

subsidiary: a legal person (***A***) is a ***subsidiary*** of another legal person (***B***) if B is a parent entity of A.

surplus, in relation to a calculation under rule 5.9.1, is the amount by which an INMA firm's CM resource exceeds its CM requirement.

Note ***CM resource*** and ***CM requirement*** are defined in rule 5.9.1 and this glossary.

terms of business (of an INMA firm for a customer) means a statement in writing of the terms on which the firm will conduct investment and advisory business with or for the customer.

Note Under COND, Chapter 4, an INMA firm must give a customer a statement, in writing, of the terms and conditions on which the firm will conduct investment and advisory business for the customer. In those Rules such a statement is called the firm's *terms of business*. See that Chapter for detailed requirements.

third party account (of an INMA firm) means an account with an eligible third party in which client money is (or is to be) held by the firm.

third-party-related distribution event has the meaning given by rule 5.10.2.

unit (in a collective investment scheme) has the same meaning as in COLL.

US GAAP means the United States Generally Accepted Accounting Principles, as amended and in force from time to time.

writing means any form of writing, and includes, for example, any way of representing or reproducing words, numbers, symbols or anything else in legible form (for example, by printing or photocopying).