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**AMENDMENTS TO THE AIFC CONDUCT OF BUSINESS RULES  
(COB)**

**AIFC ACT NO. FR0020 OF 2018**

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Astana International Financial Centre, Astana

4 July 2018

## **AIFC CONDUCT OF BUSINESS RULES (COB)**

In this document, a blue font and underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

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Guidance: Purpose of this rulebook

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Chapter 17 (Operators of a Private E-currency Business) sets out the conduct of business requirements that apply to Operators of a Private E-currency Business.

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#### **8.1.5. Arranging Custody**

An Authorised Firm which Arranges Custody must comply with the requirements in COB 8.3.7 (on assessing the suitability of Third Party Account Providers), COB 8.3.13 (on disclosure), COB 8.3.14(2) (on client reporting), and COB 8.3.15 (on record keeping).

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#### **8.2.19. Client reporting**

In relation to each Client for whom it receives or holds Client Money, an Authorised Firm must provide at least once a year a n-audited statement of the Client Money unless such a statement has been provided in a periodic statement in accordance with COB 9.

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#### **8.3.14. Client reporting**

- (1) In relation to each Client for whom it receives or holds Client Investments, an Authorised Firm must provide at least once a year an n-audited statement of the Client Investments unless such a statement has been provided in a periodic statement in accordance with (2) or COB 9.
- (2) An Authorised Person which Provides Custody for safeguarding and administering Private E-currencies belonging to a Retail Client must send a statement to its Retail Clients at least monthly. The statement must include the list, description and amount of each Private E-currency held by the Authorised Person as at the date of reporting.

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#### **8.3.16. Reconciliations**

- (1) An Authorised Firm must:
  - (a) at least once every calendar month, reconcile its records of Client Accounts held with Third Party Account Providers with monthly statements received from those Third Party Account Providers;
  - (b) at least every six months, count all Client Investments physically held by the Authorised Firm, or its Nominee Company, and reconcile the result of that count to the records of the Authorised Firm; and
  - (c) at least every six months, reconcile individual Client ledger balances with the Authorised Firm's records of Client Investment balances held in Client Accounts.
- (2) An Authorised Firm must ensure that the process of reconciliation does not give rise to a conflict of interest.
- (3) Where Authorised Persons Provide Custody for safeguarding and administering Private E-currencies belonging to another Person, all reconciliations required under 8.3.16 shall be conducted at least every week.

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#### **11.8.15. Client reporting**

In relation to each Client for whom it receives or holds Client Money, an Insurance Intermediary must provide at least once a year an n-audited statement of the Client Money.

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#### **16.3. Internal Audit of Client Statements**

At least annually, a sample of Client statements provided by an Authorised Firm under any of sections 8.2.19, 8.3.14, 9.2 or 11.8.15 must be reviewed by the internal audit function of the Authorised Firm established under GEN 5.5. The sample must be significant and stratified.

### **Guidance: Significant and Stratified Sample**

A sample will be considered “significant” if it includes ≥5% of the total number of Client statements provided during the review period. A sample will be considered “stratified” if it is drawn proportionately from a range of different Client types based on appropriate factors in light of the business of the Authorised Firm, which may include, for example: status (Retail Clients versus Professional Clients), business type, assets, income, geography and types of products held with the Authorised Firm. The results of the internal audit review must be made available to the AFSA upon request.

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## **17. OPERATORS OF A PRIVATE E-CURRENCY BUSINESS**

### **17.1. Application**

This chapter applies to an Authorised Person engaged in the activity of Operating a Private E-currency Business.

#### **Guidance**

The following activities do not constitute Operating a Private E-currency Business–

- (1) trading of Private E-currencies for the Person’s own investment purpose;
- (2) the issuance of Private E-currencies by a Person and their administration (including sale, redemption);
- (3) any other activity or arrangement that is deemed by the AFSA to not constitute Operating a Private E-currency Business, where necessary and appropriate in order for the AFSA to pursue its objectives.

### **17.2 Rules Applicable to an Authorised Private E-currency Trading Facility**

In addition to all requirements applicable to Authorised Persons in these rules, GEN, and AML, an Authorised Person carrying on the Market Activity of Operating a Private E-currency Trading Facility must comply with the applicable requirements set out in the AMI, unless the requirements in this chapter expressly provide otherwise.

### **17.3. Admission of Private E-currencies to trading**

- (1) An Authorised Person Operating a Private E-currency Trading Facility may grant admission of Private E-currencies to trading only where it is satisfied that such admission is in accordance with the AMI and an Authorised Private E-currency Trading Facility’s Admission to Trading Rules.
- (2) An Authorised Person Operating a Private E-currency Trading Facility must not permit trading of Private E-currencies on its facilities unless those Private E-currencies are admitted to, and not suspended from, trading by the Authorised Person Operating a Private E-currency Trading Facility pursuant to Chapter 6 of AMI.

#### **17.4. Additional disclosure requirements**

Prior to entering into an initial transaction for, on behalf of, or with a Client, an Authorised Person Operating a Private E-currency Business shall disclose in a clear, fair and not misleading manner:

- (a) all terms, conditions and risks relating to the Private E-currencies that have been admitted to trading and/or is the subject of the transaction;
- (b) all material risks associated with its products, services and activities; and
- (c) all details on the amount and the purpose of any premiums, fees, charges or taxes payable by the Client, whether or not these are payable to the Operating a Private E-currency Business.

#### **17.5. The risks to be disclosed pursuant to Rule 17.4. include, but are not limited to, the following:**

- (a) Private E-currencies not being legal tender or backed by a government;
- (b) the value, or process for valuation, of Private E-currencies, including the risk of a Private E-currency having no value;
- (c) the volatility and unpredictability of the price of Private E-currencies relative to Fiat Currencies;
- (d) that trading in Private E-currencies is susceptible to irrational market forces;
- (e) that the nature of Private E-currencies may lead to an increased risk of Financial Crime;
- (f) that the nature of Private E-currencies may lead to an increased risk of cyber-attack;
- (g) there being limited or, in some cases, no mechanism for the recovery of lost or stolen Private E-currencies;
- (h) the risks of Private E-currencies with regard to anonymity, irreversibility of transactions, accidental transactions, transaction recording, and settlement;
- (i) that there is no assurance that a Person who accepts a Private E-currency as payment today will continue to do so in the future;
- (j) that the nature of Private E-currencies means that technological difficulties experienced by the Authorised Person may prevent the access or use of a Client's Private E-currencies;
- (k) any links to Private E-currencies related activity outside the AIFC, which may be unregulated or subject to limited regulation; and
- (l) any regulatory changes or actions by the AFSA or Non-AIFC Regulator that may adversely affect the use, transfer, exchange, and value of a Private E-currency.

## **17.6. Complaints**

- (1) An Authorised Person Operating a Private E-currency Business shall establish and maintain written policies and procedures to fairly and timely resolve complaints made against it or other parties (including members).
- (2) An Authorised Person Operating a Private E-currency Business must provide, in a clear and conspicuous manner: on its website or websites; in all physical locations; and in any other location as the AFSA may prescribe, the following disclosures:
  - (a) the mailing address, email address, and telephone number for the receipt of complaints;
  - (b) a statement that the complainant may also bring his or her complaint to the attention of the AFSA;
  - (c) the AFSA's mailing address, website, and telephone number; and
  - (d) such other information as the AFSA may require.
- (3) An Authorised Person Operating a Private E-currency Business shall report to the AFSA any change in its complaint policies or procedures within ten days.
- (4) An Authorised Person Operating a Private E-currency Business must maintain a record of any complaint made against it or other parties (including members) for a minimum period of six years from the date of receipt of the complaint.

## **17.7. Obligation to report transactions**

- (1) An Authorised Person Operating a Private E-currency Business shall report to the AFSA details of transactions in Private E-currencies traded on its facility which are executed, or reported, through its systems.
- (2) The AFSA may, by written notice or Guidance, specify:
  - (a) the information to be included in reports made under (1); and
  - (b) the manner in which such reports are to be made.

## **17.8. AFSA power to impose a prohibition or requirement**

- (1) The AFSA may prohibit an Authorised Person Operating a Private E-currency Business from:
  - (a) entering into certain specified transactions or types of transactions; or
  - (b) outsourcing any of its functions or activities to a third party.
- (2) The AFSA may, by written notice or guidance, set fees payable by an Authorised Person Operating a Private E-currency Business to the AFSA on certain specified transactions or types of transactions.