Dubai Financial Services Authority

DFSA's Client Classification and Suitability Thematic Review | 2017

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CHIEF EXECUTIVE STATEMENT

Suitability, along with other standards of care, continue to be a hot topic in regulatory spheres. Despite its wholesale roots, the Dubai International Financial Centre (DIFC) has evolved into a hub for wealth management and advisory services for individuals, families, and other Clients who should be able to rely upon the judgments of our financial professionals.

This document contains the findings of our thematic review assessing Authorised Firms' adoption of and compliance with our newer client classification Rules, and to examine their practices in respect of suitability assessments. The report explains our rationale for undertaking this review together with our key findings and expectations. We encourage Firms to consider this information alongside your own practices and to approach us with any questions you might have.

I would like to extend thanks to all the Firms that participated in this review. Client classification and suitability are foundational elements in treating customers fairly and the achievement of good consumer outcomes. I believe you will find this report to be helpful and instructive, and I look forward to your cooperation on future themed reviews.

Ian Johnson
Chief Executive

EXECUTIVE SUMMARY

The Dubai Financial Services Authority (DFSA) commenced a thematic review of Authorised Firms' ("**Firms**") practices in respect of client classification and suitability in the third quarter of 2016 (the "**Review**"). More specifically, the Review primarily sought to examine Authorised Firms' compliance with the current client classification regime[1], including the ways in which they carry out and document the assessments underlying their classifications. Secondarily, the Review sought to assess Authorised Firms' approaches to suitability, including practices in respect of limiting the extent of suitability assessments performed for Professional Clients[2]. We carried out the Review through a broadly disseminated survey followed by on-site visits to a much smaller group of specifically selected Authorised Firms.

The Review gave rise to the following concerns regarding Authorised Firms' practices.

On Client Classification

1. Failures to provide sufficient training and guidance to employees who perform client classification assessments;
2. Inadequate and often unclear documentation maintained to support client classification assessments; and
3. Over-reliance on 'tick-box' assessment approaches rather than detailed qualitative assessments.

On Suitability

1. Failures to perform or document suitability assessments in connection with advice or discretionary transactions;
2. Continued use of 'suitability waivers' and other language in Client Agreements to limit liability, duties and obligations in respect of suitability; and
3. Inadequacies in internal policies and procedures concerning relevant suitability and client classification obligations.

The Report considers these concerns in further detail. Firms are encouraged to consider this information together with their own practices.

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[1] COB 2.1 through 2.6.

[2] "Professional Client" is defined in the Glossary Module of the DFSA Rulebook. COB 3.4.2(2) allows a Firm to limit the extent it will consider suitability when recommending to, or undertaking a transaction on a discretionary basis for, a Professional Client.

"SUITABILITY REMAINS A PERENNIAL HOT TOPIC FOR CONDUCT REGULATORS, ONE THE DFSA HAS SPECIFICALLY HIGHLIGHTED TO ITS STAKEHOLDERS IN ITS PRIORITY STATEMENTS AND COMMUNITY OUTREACH."

BACKGROUND AND IMPETUS FOR THE REVIEW

The DFSA launched the Review primarily to assess Authorised Firms' compliance with the client classification Rules[3], which we amended considerably in 2015. This new regime clarified several of our expectations of Authorised Firms when classifying Clients, contained more prescriptive instruction for the assessments necessary to classify Clients, and provided increased flexibility for Branches and members of larger Groups to rely upon classifications rendered by related parties. The majority of the relevant Rule changes came into force on 1 April 2015[4], subsequent to which sufficient time has elapsed to warrant a thematic review to examine Authorised Firms' efforts to adopt the new regime and the quality of related documentation.

Suitability remains a perennial hot topic for conduct regulators, one the DFSA has specifically highlighted to its stakeholders in its priority statements and community outreach[5]. The DFSA's suitability Rules[6] have not been subject to significant revision in some time; however, we have commenced work to benchmark this regime against other jurisdictions and standard-setters with a view to future enhancements.

The DFSA examined Authorised Firms' practices in respect of Client take-on processes, including client classification, and suitability in a 2012 thematic review (the "**2012 Review**")[7]. The 2012 Review gave rise to concerns regarding weaknesses in the documentary evidence maintained to support the relevant client classification assessments and efforts to monitor and test the classifications assigned. The results of the 2012 Review also addressed the use of 'Suitability Limits and Waivers' and reported favourably that we did not observe any apparent coercion of Clients by Authorised Firms to consent to those terms. We did, however, caution Authorised Firms not to provide advice in instances where it has agreed with Clients to limit or waive suitability. The DFSA did not design the current Review specifically to follow-up to the 2012 Review, particularly in light of the considerable rule changes coming into force since then. However, there are common themes between the two undertakings, as will be discussed in this report, in respect of areas of focus and observations.

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3 COB 2.

4 Generally, the entirety of the amendments to COB 2 came into force on 1 April 2015, with the lone exceptions of the net asset requirements of COB 2.3.7(1)(a) and COB 2.3.8(1)(a), the effectuation of which was delayed until 1 April 2016, pursuant to COB 2.6.3(1).

5 The DFSA highlighted client classification and suitability as a key area of supervisory focus in its 20 April 2015 Dear SEO Letter regarding Supervisory Priorities and Issues. The DFSA also reiterated its concerns regarding suitability and, specifically, the use by Authorised Firms of clauses in Client Agreements to limit their duties or liability in respect of suitability in its Supervisory Outreach sessions on 4 June 2015 and 30 May 2016.

6 COB 3.4 and COB 7.8.

7 The results of this thematic review were disseminated in an 18 October 2012 Dear SEO Letter.

Concerns related to both client classification and suitability were again brought to the fore in 2015 when the DIFC Courts entered its decision in the Al Khorafi case[8]. Notably, the judgment in this case found the relevant Firm to have failed to carry out sufficient investigation into the claimants (the Clients) to ascertain whether they qualified as Clients[9] and that the Firm also failed to consider the suitability of investment recommendation(s) it provided to the claimants (its Clients). The Court held in favour of the claimants (the Clients) and awarded the claimants significant damages. In its judgement, the Court emphasised the need for Authorised Firms to give due regard to interests of their Clients when providing Financial Services to those Clients.

In light of the extent of changes to the client classification regime and the publicity surrounding the Al Khorafi case, the DFSA has continued to feature client classification and suitability prominently in our supervisory agenda. The Review is a timely undertaking to gauge the responses of Authorised Firms and to ensure that DIFC Clients are being classified properly and accorded all appropriate regulatory protections. We expect this report to be instructive to Firms and their staff and to promote certain behaviours conducive to the best interests of Clients in the DIFC.

8 DIFC Courts CFI 026/2009 (1) Rafed Abdel Mohsen Bader Al Khorafi, (2) Amrah Ali Abdel Latif Al Hamad, and (3) Alia Mohamed Sulaiman Al Rifai v Bank Sarasin-Alpen (ME) Limited and (2) Bank Sarasin & Co. Ltd. DIFC Court of Appeal: (1) Rafed Abdel Mohsen Bader Al Khorafi (2) Amrah Ali Abdel Latif Al Hamad (3) Alia Mohamed Sulaiman Al Rifai v (1) Bank Sarasin-Alpen (ME) Limited (2) Bank J. Safra Sarasin Limited (formerly Bank Sarasin & Co. Ltd) [2015] DIFC CA 003, March 3, 2016 Court of Appeal - Judgments.

9 Pursuant to the client classification regime in place in 2009, status as a Client was generally consistent with today's definition of a Professional Client, where any person not meeting the standards in effect at that time would need to have been regarded as a 'retail customer.'

METHODOLOGY

The DFSA carried out the Review in four distinct phases. Phase one consisted of a survey that was issued to a total of 217 Authorised Firms. We chose these Firms because they reported in their Electronic Prudential Reporting System (EPRS) returns having Professional Clients[10]. We were particularly pleased to have an 89% response rate to this survey. Phase two consisted of a desk-based review of survey responses designed to identify any patterns or trends in that data and responses indicative of both good and bad practices.

In connection with these two phases of analysis, we selected 22 Authorised Firms at which to conduct on-site visits. These visits, collectively, constituted phase three of this process. The 22 Authorised Firms selected for visits included 20 that did respond to the survey and another two that did not. Additionally, we carefully selected this group of Authorised Firms to include representation across each DFSA licence category and a broad range of Financial Services activities.

Prior to our site visits, we requested each selected Authorised Firm to provide to us documentation regarding their client classification and suitability-related procedures.

During the on-site visits, the DFSA interviewed key staff and reviewed data in Client files to assess Firms' implementation of their client classification and suitability-related procedures and the quality of their record keeping. The fourth and final phase of the Review involved our analysis of the findings and observations from the site visits along with further consideration of the survey responses and the preparation of this report.

Certain of the DFSA's observations may relate to information provided in the survey responses while other observations may relate to the on-site visits, which had a specific focus group of Authorised Firms. Please note, the DFSA's observations and findings in this report will not be extrapolated across all Authorised Firms in the DIFC.

[10] EPRS Form B280 reports from Q2 2016.

"WE ALSO OBSERVED THAT MANY AUTHORISED FIRMS THAT DO NOT HAVE A RETAIL ENDORSEMENT WILL NOTIFY PROSPECTIVE CLIENTS THAT THEY ARE UNABLE TO PROVIDE FINANCIAL SERVICES TO RETAIL CLIENTS AND, THUS, WOULD NOT BE ABLE TO DEAL WITH THEM SHOULD THEY ELECT TO BE TREATED AS SUCH."

FINDINGS AND OBSERVATIONS – CLIENT CLASSIFICATION

Responsibility for Client Classification

According to survey responses, the majority of Authorised Firms rely on their front office, Relationship Managers and their Compliance Officer/Money Laundering Reporting Officer ("**CO/MLRO**") to determine the appropriate classification to assign to Clients[11]. Firms also relied on staff in their middle and back offices and line management, but to a far lesser degree. Interestingly, only 4% of survey respondents reported that they rely on client classifications conducted elsewhere.

During our site visits, the DFSA learned that, in some instances, the front office was responsible only for gathering the relevant information and documentation, while the CO/MLRO or a separate on-boarding team would use that data to classify new Clients. It is worth noting that the DFSA does not prescribe who carries out client classification duties on behalf of the particular Firm, rather the focus is to ensure that whoever is nominated for this role is supported by robust policies and procedures and is trained appropriately. In terms of training, the DFSA was disappointed that a substantial proportion of Firms included in the on-site visits for this Review did not provide adequate training or guidance to their staff (including front office) on client assessments and classification.

BEST PRACTICES

- Client classification involves qualitative assessments, particularly with respect to knowledge and experience, which rely heavily on deep awareness of individuals' personal details. These assessments may be best carried out by the staff members most familiar with the Client or that completed relevant Know Your Customer (KYC) and Customer Due Diligence (CDD) efforts.
- Documenting knowledge and experience assessments can be challenging often due to the lack of documentary evidence. File notes are important to record relevant details and decision-making processes.
- Training for all staff involved in client classification is critical.

[11] The survey permitted Authorised Firms to provide multiple responses to the question, "Who is primarily responsible for determining the appropriate classification for Professional Clients?" A significant number of respondents marked boxes reflecting both Relationship Managers and CO/MLRO.

Documenting Client Classification

Since the launch of the current Rules in 2015, Authorised Firms have been required to classify Professional Clients according to the following three sub-categories: 'deemed' Professional Clients, 'service-based' Professional Clients and 'assessed' Professional Clients. These categories and the distinctions between them are important not only because they reflect the type of Client and context in which Financial Services are to be provided to that Client, but also because each category is instructive in terms of the procedures that must be followed when assessing a person for that particular Client category.

Based on both survey responses and site visits, we concluded that an unacceptable number of Authorised Firms do not specify in their records the specific sub-category classification it has assigned to its Professional Clients. This gives rise to concerns that Firms did not follow appropriate procedures and may also have wrongly classified Clients. Incorrectly classifying Clients is a particular cause for concern for the DFSA because a specific retail licence endorsement is required in order for a Firm to provide Financial Services to non-Professional Clients (Retail Clients), and to date, only a small number of Firms hold a Retail Client endorsement on their licence.

Reliance on Classification Made Elsewhere

As noted above, some Authorised Firms rely on client classifications made by their head offices or other members of their Group. While this is permitted under the Rules[12], the Authorised Firm doing so must have reasonable grounds to believe that classification to be materially similar to the classifications required by our regime and to have identified and addressed any gaps that may exist. Disappointingly, however, during our on-site visits, relevant staff were often unable to provide satisfactory responses to our questions regarding the nature of classification procedures that had been carried out and whether those Clients had been fully on-boarded.

[12] COB 2.4.4.

Net Asset Assessments

In connection with the reviews of Client files completed during on-site visits, we were pleased to see that the majority of Authorised Firms had obtained and retained some documentary evidence in respect of Clients' net assets. This documentation often came in the form of bank statements and other investment or portfolio statements. It should be noted, however, that this information was not always complete and it often did not address Clients' liabilities. Furthermore, we also found that fewer than half of the firms we visited had documented their assessments of Clients' net assets.

Good Practice:
Obtaining account statements and tax returns, where available, to provide good insights into net assets.

Bad Practice:
Relying solely on Clients' self-declaration of net assets.

We wish to emphasise here the importance of this assessment. Merely obtaining a bank statement and including it in the file neither constitutes an assessment nor documents due consideration of a person's net assets. These documents may not on their own shed light on a person's borrowing or other indebtedness, which may offset some or all of the asset values reflected in such statements. In addition to this documentary evidence, Authorised Firms should seek to obtain other information from Clients about their overall financial position and to create file notes to bridge any gaps between that data and their conclusions regarding a person's net assets.

Self-Certification

Authorised Firms may not rely on Clients to self-certify or to self-declare that they qualify as a Professional Client or that they possess sufficient net assets or relevant knowledge and experience.

Knowledge and Experience Assessments

The DFSA was encouraged by certain results of the on-site reviews, which indicated that Authorised Firms are performing knowledge and experience assessments and that they are applying these tests to the appropriate people, especially in connection with Clients that are Undertakings, where the procedures prescribed in our Rules can be complex[13]. Although there were positive outcomes, the DFSA observed a considerable need for improvement in the practices applied by Firms when undertaking and documenting their Client assessments. The majority of the Firms visited during the on-site assessments used questionnaires or other 'tick-box' approaches to obtain information from Clients about their financial knowledge and experience.

Leaving aside the quality of these questionnaires, which varied, the DFSA is concerned about any approach to Client assessments that relies solely or too heavily on questionnaires. Additionally, the DFSA is concerned that, of the Firms visited, one-fifth either did not document or were unable to demonstrate an awareness of whether their Clients had relied or will rely upon professional investment advice, which is important in this context.

Joint Accounts

Simply put, our Rules require Authorised Firms to consider the net assets and knowledge and experience of each person who is party to a joint account, or to consider those factors only in respect of the 'primary account holder' where any 'secondary account holder(s)' has provided written confirmation that decisions made in respect of that account will generally be made by the primary account holder[14]. Our site visits allowed us to scrutinise joint accounts classified by Authorised Firms pursuant to both of these approaches and gave rise to generally favourable observations in respect of the procedures followed and related documentation.

[13] COB 2.3.8 and COB 2.4.3.
[14] COB 2.3.7(3).

The Right to Opt-in as Retail Client, Requests for Reclassification and Multiple Classifications

In connection with our site visits, nearly three-fourths of Authorised Firms could demonstrate that they had informed Clients of their right to be classified as a Retail Client. However, significantly fewer Firms could demonstrate full compliance with the relevant Rule[15], which requires Firms to provide to Clients written notification about (a) their right to be classified as a Retail Client; (b) the higher level of protection available to Retail Clients; and (c) the timeframe within which to elect to be classified as a Retail Client.

We also observed that many Authorised Firms that do not have a Retail Endorsement will notify prospective Clients that they are unable to provide Financial Services to Retail Clients and, thus, would not be able to deal with them should they elect to be treated as such.

The DFSA intended to require each Authorised Firm to notify every Client of its right to elect to be classified as a Retail Client, irrespective of whether it has a Retail Endorsement. However, in carrying out the Review, we became aware that this Rule[16] has been consistently interpreted differently by a range of Firms. We take comfort in our observation that, in most cases where this notice had not been provided, Authorised Firms had informed prospective Clients of their inability to deal with Retail Clients. We will, however, consider the drafting of this Rule further to determine whether additional guidance is needed here.

While none of the Authorised Firms visited[17] reported that they have had Clients request to be treated as Retail Clients, two-thirds of those Firms indicated they would address any such request simply by terminating that Client relationship. Additionally, while many of the Firms visited provide two or more Financial Services, one of them had classified a Client differently in respect of different Financial Services[18], while the remainder of Firms represented that they had not received any requests from Clients to do so[19].

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[15] COB 2.4.1(1).
[16] COB 2.4.1(1).
[17] Only one survey respondent reported having received such a request.
[18] As permitted under COB 2.3.1(2).
[19] Eight survey respondents indicated that they had classified Clients differently in respect of different Financial Services; however, none of these firms were included in our site visits.

"DURING OUR SITE VISITS, WE LEARNED THAT MOST FIRMS DO NOT HAVE DEDICATED SYSTEMS, POLICIES OR PROCEDURES TO VALIDATE CLIENT CLASSIFICATIONS ON AN ONGOING BASIS."

We understand that requests from Clients to opt into Retail Client treatment or to be classified differently in respect of different Financial Services have not arisen frequently since this regime came into effect. Nevertheless, we encourage all Authorised Firms to have and document policies and procedures for dealing with these types of requests in order to deal with them efficiently and effectively, should they arise.

Ongoing Appropriateness of Classification and 'Grandfathered' Clients

Our Rules require that, where an Authorised Firm becomes aware that a Client[20] no longer fulfils the requirements to remain classified as a Professional Client, it must notify the Client of this determination and the responsive measures available to it and the Client[21].

During our site visits, we learned that most Firms do not have dedicated systems, policies or procedures to validate client classifications on an ongoing basis. Rather, Firms only consider this when personal data obtained in connection with a periodic Anti-Money Laundering-related KYC/CDD review reveals a significant change to the factors underlying the original client classification. Additionally, we learned that most Firms would not reconsider the classification of any Client that had invested more than USD1 million or greater through them. This position appeared to be predicated on the belief that any Client who has invested in excess of USD1 million through any one Firm was more likely than not to have sufficient net assets; and Professional Clients are considered to maintain their knowledge and experience over time. Generally, the DFSA does not believe these approaches are unreasonable in certain situations.

[20] Including a Client considered to be a 'grandfathered' Professional Client pursuant to the Transitional Provisions of COB 2.6.1 and 2.6.2.
[21] COB 2.3.3(2).

FINDINGS AND OBSERVATIONS – SUITABILITY

Suitability Assessments

The majority of Authorised Firms that we visited were able to demonstrate that they performed and documented some form of suitability assessment in connection with the provision of advice or the execution of discretionary transactions. With that said, we believe there is considerable room for improvement in the quality of suitability assessments and related documentation. Firms' approaches to these assessments varied, but generally considered factors such as Clients' risk tolerances and investment objectives. However, the DFSA is of the view there remains considerable room for improvement in the quality of suitability assessments conducted and related record keeping. The DFSA continues to have serious concerns about the number of Firms that were unable to demonstrate they had carried out required Client suitability assessments in accordance with the DFSA's Rules[22]. The DFSA wishes to emphasise that Firms who fail to adequately perform and document Client suitability assessments may expose themselves to considerable legal and compliance risks, including being unable to demonstrate reasonable grounds for recommending certain services and/or products considered unsuitable for a particular Client, if such claims arise.

Product Risk/Client Risk Matching

The DFSA continues to have concerns regarding Authorised Firms' practices of recommending specific products to Clients based only on the perceived alignment of the product's risk rating and the Client's risk appetite. Although this concern was not a specific focus of the Review, by reason of the DFSA's general supervisory oversight of Firms, it became aware of this practice, which it considers serious and worthy of mention here.

For example, we have observed instances where Authorised Firms rate the risk of the products it offers and then recommends those products to Clients whose risk tolerances have been similarly rated, where such recommendation is driven solely by the alignment of those ratings giving no consideration to any other Client-specific factors. Often, we see product risk ratings being determined by product teams within the Authorised Firm or an affiliated entity that have no visibility across any one Client's situation.

[22] COB 3.4.

We are concerned about this practice because it fails to consider the wider range of concerns important to determine the suitability of a product for a particular Client, at that point in time. For example, this approach does not consider the suitability of the recommended product vis-à-vis other securities held by the Client or the potential for overconcentration in a particular sector or maturity horizon. While this practice may not be likely to produce recommendations that stray materially from a Client's appetites, we take the view that it does not on its own sufficiently consider each individual Client's circumstances to satisfy the 'reasonable basis' standard for determining suitability[23]. Moreover, it does not ensure that the recommended product is the most appropriate of all available products for that customer at that time.

Limitations on Suitability and Use of 'Suitability Waivers'

The majority of survey respondents indicated that they use Client Agreements that contain language that limits, to any degree, the extent to which they will consider suitability or that they allow Clients to agree to waive suitability altogether. Furthermore, through our site visits, we determined that a significant proportion of Firms that limit the extent of their suitability consideration do so without having first provided written warning or notice of the same to relevant Clients or obtained from them express consent to do so. This is a serious concern for the DFSA.

BEST PRACTICE

Where an Authorised Firm or its Client seeks to limit the extent of any necessary suitability assessments, we encourage the Authorised Firm to stipulate the agreed limitations in a separate document, independent of the general account terms and conditions. This will ensure that the agreed suitability approach is presented to the Client clearly and enables the firm to capture the Client's express consent through a signature applied specifically and only to those terms.

We have also observed that Authorised Firms often address suitability limitations in a single clause in the Client Agreement, embedded amongst other unrelated terms and conditions which may distract from the importance of highlighting this to the Client. This practice is not to be considered as a satisfactory clear written warning of the limitation of suitability. Moreover, the

[23] COB 3.4.2(1) prohibits an Authorised Firm from recommending to a Client a financial product or service unless it has a reasonable basis for considering that recommendation to be suitable for that particular Client.

DFSA is of the view that, where a suitability limitation is included in a Client Agreement amongst numerous other account terms and conditions, we will not regard the Client's execution of the account agreement as an express consent to that limitation of suitability. The DFSA wants to make clear that where Firms: (a) fail to warn Clients about suitability limitations; (b) fail to provide these warnings in a sufficiently clear and prominent manner; or (c) condition the establishment of a Client account as subject to, or conditional upon, that Client accepting a suitability limitation, this is a potentially egregious disregard of the interests of the Client. This approach may likely result in the Firm contravening certain Rules, including but not limited to the DFSA's Principles for Authorised Firms[24].

The precise language used by Authorised Firms in its limitations on suitability is very important. In some instances, we have observed Authorised Firms to have entered into arrangements with Clients pursuant to which they limit the extent to which they will consider suitability in some way, which is permissible under the Rule[25] provided the Firm has fulfilled certain enumerated conditions. On the other hand, we have also observed Authorised Firms use language in this context through which they seek to have Clients waive or dispense with their 'duties' or 'obligations' in respect of suitability, altogether. The DFSA wants to make it clear to Firms that this approach is completely unacceptable and is fundamentally contrary to the overarching Suitability Principle[26], which is unequivocal, unconditional, and not capable of waiver. The DFSA also reminds Firms they must not, in any form of communication with a person (including Client Agreements), attempt to limit or avoid any duty or liability the Firm may have to that person (Client) under legislation administered by the DFSA[27] .

In light of the findings of the Review, we offer the following recommendations to Authorised Firms to support the enhancement of relevant systems and controls and to ensure Client's interests are properly considered and protected.

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[24] While suitability assessments may be limited in COB 3.4.2 they cannot be waived/dispensed in a blanket/absolute manner. The Firm must keep in mind other relevant Rules that apply to its dealings with its Clients. For example, Principle 1 of the DFSA's Principles for Authorised Firms (GEN 4.2.1) requires Firms to observe high standards of integrity and fair dealing. Principle 6 of the DFSA's Principles for Authorised Firms (GEN 4.2.6) requires Firms to pay due regard to the interests of its customers and to communicate information to them in a way that is clear, fair and not misleading.

[25] COB 3.4.2(2).

[26] Principle 8 of the DFSA's Principles for Authorised Firms (GEN 4.2.8) requires Authorised Firms to take reasonable care to ensure the suitability of its advice and discretionary decisions for customers who are entitled to rely upon its judgment.

[27] COB 3.2.2.

"ALL FIRMS MUST KEEP IN MIND THAT CLIENT CLASSIFICATION AND SUITABILITY ARE AND CONTINUE TO BE VERY HIGH DFSA PRIORITIES AND WILL FEATURE IN THE DFSA'S FUTURE SUPERVISORY AGENDA."

RECOMMENDATIONS

On Client Classification

1. The Development of appropriate policies and procedures, including operational procedures, to establish a framework that:
    a. clearly delegates relevant maker/checker responsibilities;
    b. provides sufficient guidance on the steps required to carry out the assessments underlying client classification;
    c. adequately document Client assessments, including the final client classification; and
    d. ensures all Clients are notified of their right to be classified as a Retail Client[28].
2. Where client classification is performed by a group member: Perform due diligence on the client classification procedures of each group member and address any gaps between that group member's practices and the requirements sets out in the DFSA's client classification Rules.
3. Where third party documentation is not available to support certain aspects of the Client assessment, make detailed file notes on decision making and Client specific details.
4. Avoid tick-box approaches and self-certification by Clients.
5. Provide training to staff on what client classification entails, including practical elements and examples of how to carry out assessments for client classification and record keeping.

On Suitability

1. Suitability obligations and responsibilities cannot be waived by a Firm's Client – do not attempt this or include such waivers in Client documentation.
2. Address any limitations on suitability assessments agreed by the Client clearly and in a stand-alone document.
3. Consider fully the merits of any recommendation or discretionary transaction in the interests of the particular Client (this is being provided to or performed on behalf of) and document the underlying rationale.

[28] "Retail Client" is defined in the Glossary Module of the DFSA Rulebook.

FINAL COMMENTS

We would like to extend our thanks to all Firms who contributed to the Review by responding to the survey and/or participating in our on-site visits. We are particularly pleased with the response rate to the survey, which was outstanding.

The Review reveals some good and bad practices concerning client classification and suitability. We have attempted to present the results of the Review in a manner that will enable Firms to consider how their current practices fit within the DFSA's expectations, including where improvements may be required. It may be the case that certain poor practices observed by the DFSA are capable of correction by changes to a Firm's policies and procedures. However, the DFSA's observations also revealed that there are certain bad practices which are a serious concern for the DFSA. Firms engaging in bad practices will need to make a concerted and substantial effort to remedy these failures.

All Firms must keep in mind that client classification and suitability are and continue to be very high DFSA priorities and will feature in the DFSA's future supervisory agenda.

FOR GENERAL ENQUIRIES

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