



# **AUTHORISATION MODULE**



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<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.1 Purpose

### *Executive Summary*

- AU-A.1.1 The Authorisation Module sets out the Central Bank of Bahrain's (CBB) approach to licensing providers of regulated investment services in the Kingdom of Bahrain. It also sets out CBB requirements for approving persons undertaking key functions in those providers.
- AU-A.1.2 Persons who provide any of the following regulated investment services within or from the Kingdom of Bahrain, and are not otherwise licensed by CBB as a bank, are required to be licensed by CBB as an investment firm licensee:
- (a) Dealing in financial instruments as principal;
  - (b) Dealing in financial instruments as agent;
  - (c) Arranging deals in financial instruments;
  - (d) Managing financial instruments;
  - (e) Safeguarding financial instruments (i.e. a custodian);
  - (f) Advising on financial instruments; and
  - (g) Operating a collective investment undertaking (i.e. an operator).
- AU-A.1.3 Three categories of investment firm license are provided for, depending on the type of regulated investment services undertaken. The requirements in Volume 4 (Investment Business) are tailored in certain respects, according to the license Category concerned, in order to address the specific features and risks associated with each type of regulated investment service.
- AU-A.1.4 Collectively, licensed providers of regulated investment services are called investment firm licensees. Bahrain-incorporated investment firm licensees are called Bahraini investment firm licensees. Investment firm licensees that are incorporated in an overseas jurisdiction and operate via a branch presence in the Kingdom of Bahrain are called overseas investment firm licensees. The same naming convention applies to the various sub-categories of investment firms (e.g. Bahraini Category 1 investment firm, overseas Category 1 investment firm etc).
- AU-A.1.5 Regulated investment services are defined in Section AU-1.4. Their definition excludes operating a recognised exchange (such as the Bahrain Stock Exchange) and related infrastructure (such as central clearing and depository systems). These activities are separately addressed, in the form of individual regulations issued by the CBB's Capital Markets Supervision Directorate, and the Bahrain Stock Exchange.
- AU-A.1.6 Persons undertaking certain functions in relation to investment firm licensees require prior CBB approval. These functions (called 'controlled functions') include Directors and members of senior management. The controlled functions regime supplements the licensing regime by ensuring that key persons involved in the running of investment firm licensees are fit and proper. Those authorised by the CBB to undertake controlled functions are called approved persons.



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## AU-A.1 Purpose (continued)

### *Retaining Authorised Status*

#### AU-A.1.7

The requirements set out in Chapters AU-2 and AU-3 represent the minimum conditions that have to be met in each case, both at the point of authorisation and on an on-going basis thereafter, in order for authorised status to be retained.

### *Representative Offices and Ancillary Services Providers*

#### AU-A.1.8

Neither representative offices of foreign investment firms, nor ancillary services providers, are covered in Volume 4 (Investment Business). Requirements covering these types of activities will instead be included in Volume 5.

#### AU-A.1.9

Volume 5 (Specialised Activities) of the CBB Rulebook issued in December 2010 deals with representative offices of foreign investment firms.

#### AU-A.1.10

Until such time as Volume 5 (Specialised Activities) of the CBB Rulebook is issued, ancillary services providers remain subject to the requirements contained in the CBB's 'Standard Conditions and Licensing Criteria', dealing with providers of ancillary services to the financial sector.

### *Legal Basis*

#### AU-A.1.11

This Module contains the CBB's Directive, Regulation and Resolutions (as amended from time to time) regarding authorisation under Volume 4 of the CBB Rulebook. It is applicable to all investment firm licensees (as well as to approved persons), and is issued under the powers available to the CBB under Articles 37 to 42, 44 to 48 and 180 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). It includes the requirements contained in Resolution No (1) of 2007 with respect to determining fees categories due for licensees and services provided by the CBB. The Module also contains requirements under Regulation No (1) of 2007 pertaining to the CBB's regulated services issued under Article 39 of the CBB Law and contains requirements governing the conditions of granting a license for the provision of regulated services as prescribed under Resolution No.(43) of 2011 and issued under the powers available to the CBB under Article 44(c). The Module contains requirements under Resolution No.(16) for the year 2012 including the prohibition of marketing financial services pursuant to Article 42 of the CBB Law. This Module contains the prior approval requirements for approved persons under Resolution No (23) of 2015.



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## **AU-A.1 Purpose (continued)**

AU-A.1.12 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.



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## AU-A.2 Module History

### *Evolution of Module*

AU-A.2.1 This Module was first issued in April 2006, as part of the first phase of Volume 4 (Investment Business) to be released. Any material changes that have subsequently been made to this Module are annotated with the calendar quarter date in which the change was made: Chapter UG-3 provides further details on Rulebook maintenance and version control.

AU-A.2.2 When the CBB replaced the BMA in September 2006, the provisions of this Module remained in force. Volume 4 was updated in July 2007 to reflect the switch to the CBB, as well as other policy changes. However, new calendar quarter dates were only issued where these involved changes in the substance of Rules.

AU-A.2.3 A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes
AU-A.1.3	07/2006	Deletion of reference to 'acting as a trust service provider'.
AU-1.1.13	07/2006	Deletion of reference to 'acting as a trust service provider'.
AU-1.1.14	07/2006	Clarification of scope of exemption.
AU-1.4.50	07/2006	Deletion of paragraph relating to 'acting as a trust service provider'.
AU-1.4.51	07/2006	Deletion of paragraph relating to 'acting as a trust service provider'.
AU-A.1	07/2007	Changes to reflect new CBB Law and reclassification of <u>administrators</u> as <u>ancillary services providers</u> (i.e. <u>licensees</u> , to be subject to Volume 5 of the CBB Rulebook).
AU-1.3	07/2007	Deletion of this Section to reflect reclassification of <u>administrators</u> as <u>ancillary services providers</u> (i.e. <u>licensees</u> , to be subject to Volume 5 of the CBB Rulebook).
AU-1.4	07/2007	Clarification of exemption in Rule AU-1.4.8; and minor change to definition of <u>collective investment undertaking</u> (to align with new Module CIU, Volume 6).
AU-4	07/2007	Chapter deleted to reflect reclassification of <u>administrators</u> as <u>ancillary services providers</u> (i.e. <u>licensees</u> , to be subject to Volume 5 of the CBB Rulebook).
AU-5.1	07/2007	Section amended to reflect new procedures reflecting CBB Law.
AU-5.3	07/2007	Deleted following reclassification of <u>administrators</u> as <u>ancillary services providers</u> (i.e. <u>licensees</u> , to be subject to Volume 5 of the CBB Rulebook).
AU-5.4	07/2007	Amended to reflect new CBB Law procedures.
AU-5.5	07/2007	Amended to reflect new CBB Law procedures.
AU-6	07/2007	New Chapter AU-6 on application and license fees (old material on fees, previously contained in Module GR, deleted).
AU-5.1.5 and 5.1.5A	01/2008	Clarified CBB's requirements for letters of comfort and/or letters of guarantee.
AU-5.1.13	01/2008	Clarified CBB's requirements for items that must be in place within 6 months of a new license being issued.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.2 Module History (continued)

AU-A.2.3 (continued):

Module Ref.	Change Date	Description of Changes
AU-1.1.18	04/2008	Clarified that <u>Category 3 investment firms</u> must be independent.
AU-5.2.2	04/2008	Clarified to whom Form 3 should be sent to if dealing with a request for an appointment of MLRO from an existing investment firm licensee.
AU-5.5.5	04/2008	Outlined CBB's requirements in instances where a controlled function becomes vacant.
AU-5.2.5	07/2008	Clarified that the refusal decision by the CBB to grant a person 'approved person' status is issued to the investment firm licensee
AU-5.2.6	07/2008	Added cross reference.
AU-1.1.18	10/2009	Clarified that Category 3 investment firms must refrain from receiving fees or commissions from parties other than clients.
AU-1.1.24	10/2009	Paragraph changed from Guidance to Rule.
AU-1.2	10/2009	Amended to reflect requirements of Modules HC and RM.
AU-1.2.2	10/2009	Controlled function of Deputy MLRO added.
AU-1.2.15	10/2009	New Rule added to clarify definition of Compliance Officer and MLRO/Deputy MLRO.
AU-1.4.11	10/2009	Clarified that dealing in financial instruments as principal includes underwriting and private placement.
AU-1.4.19	10/2009	Clarified that dealing in financial instruments as agent does not include execution of deals.
AU-2.3	10/2009	Updated to include CBB's requirements for controllers.
AU-5.1.5	10/2009	Clarified that copy of commercial registration certificate is required for existing Bahraini companies only.
AU-5.2	10/2009	Updated to include CBB's information requirements for the appointment of approved persons.
AU-B.1.3, AU-2.5.2 and AU-2.7.2	07/2010	Paragraphs deleted.
AU-B.2 and AU-5.5.5	07/2010	Amended heading.
AU-1.2.9 and AU-5.5.1	07/2010	Added cross reference.
AU-1.4.33 and AU-1.4.37	07/2010	Paragraphs changed from Guidance to Rules and amended to clarify definition of safeguarding financial instruments.
AU-1.4.42 and AU-1.4.43	07/2010	New rules added to clarify definition of advising on financial instruments.
AU-1.4.49, AU-1.4.50, AU-1.4.51 and AU-5.5.5	07/2010	Amended cross reference.
AU-1.2.9, AU-1.4.49, AU-1.4.50, AU-1.4.51, AU-2.3.5, AU-5.1.6, AU-5.1.12A, AU-5.1.12B, AU-5.1.12D and AU-6.1.1	07/2010	Paragraphs amended.
AU-5.1.5A	07/2010	Paragraphs amended and changed to Rule.
AU-5.1.12K	07/2010	Paragraph added to require confirmation that capital has been paid in before the final approval for a license.
AU-5.1.13	07/2010	Updated to include new requirement to be submitted within six months of the license being issued.
AU-6.2	07/2010	Updated to include CBB's annual license fee requirements.



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## AU-A.2 Module History (continued)

AU-A.2.3 (continued):

Module Ref.	Change Date	Description of Changes
AU-A.1.11	01/2011	Clarified legal basis.
AU-1.1.2	01/2011	Clarified guidance.
AU-1.1.21, AU-1.1.22 and AU-1.2.1(f)	01/2011	Paragraphs deleted for consistency in CBB Rulebook.
AU-1.2	01/2011	Amended as requirements moved from Module HC to Module AU.
AU-1.4.25	01/2011	Amended guidance to reflect new definitions related to licensed exchange(s).
AU-5.1.13(j)	01/2011	Added language requirements for commercial registration certificate.
AU-5.1.5A	01/2011	Amended CBB's requirements concerning letters of guarantee to be submitted with licensing application.
AU-5.1.13	01/2011	Added requirement to submit copy of licensee's business card and any written communication including a statement that the investment firm is licensed by the CBB.
AU-5.5.3	01/2011	Clarified guidance.
AU-1.2.16	04/2011	Added a definition Paragraph for the compliance officer.
AU-5.1.5(m)	04/2011	Corrected typo and added clarification to requirements dealing with private placements.
AU-6.2.9A	04/2011	Added the requirement for annual fees for SPV's to be in line with the requirements of Resolution No (1) of 2007.
AU-A.1.9	10/2011	Guidance Paragraph amended as Volume 5_Representative Offices was issued in December 2010.
AU-A.1.11	10/2011	Legal basis updated to reflect all Articles of the CBB Law covered by this Module as well as applicable Resolutions.
AU-5.5	10/2011	Clarified language on cancellation of a license to be in line with other Volumes of the CBB Rulebook.
AU-1.1.14, AU-1.4.11A and AU-1.4.11B	01/2012	Guidance in AU-1.1.14 amended and changed to Rule and moved to AU-1.4.11A and additional guidance added as AU-1.4.11B.
AU-1.4.19 and AU-1.4.19A	01/2012	Clarified Rule AU-1.4.19 and added guidance for Category 3 investment firms.
AU-1.4.33	01/2012	Added reference to Volume 5 (Administrators) and amended Rule.
AU-2.2.2 and AU-2.2.3	01/2012	Restructured and amended guidance into two Paragraphs, including one guidance and one Rule.
AU-2.3.2	01/2012	Clarified application of Rule for Category 1 and 2 investment firm licensees.
AU-5.5.5	01/2012	Clarified Rule.
AU-6.2.9B	01/2012	Guidance added to clarify the non application of fees for SPVs established for the purpose of setting up a locally domiciled CIU.
AU-1.2.13, AU-1.2.13A and AU-1.2.13B	07/2012	Clarified Rule and added Paragraphs on investment consultant and investment adviser.





<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## AU-A.2 Module History (continued)

AU-A.2.3 (continued):

Module Ref.	Change Date	Description of Changes
AU-1.4.2 and AU-5.5.4A	10/2012	Corrected cross reference.
AU-1.1.25, AU-1.2.13, AU-1.4.11, AU-1.4.11A, AU-1.4.15, AU-1.4.17, AU-1.4.18, AU-1.4.28, AU-1.4.29, AU-1.4.41 and AU-1.4.45	10/2012	The term 'underwrite/underwriting' has now been defined and included in the Glossary under Part B of Volume 4.
AU-1.4.15	10/2012	Clarified Rule dealing with providing credit.
AU-1.4.52	10/2012	Reference updated to reflect the issuance of Volume 7 (CIU).
AU-A.1.11	01/2013	Updated legal basis.
AU-B.1.1	01/2013	Updated prohibition as per issuance of Resolution No.(16) for the year 2012.
AU-1.1	01/2013	References added to requirements under Resolution No.(16) for the year 2012.
AU-1.1.24	04/2013	Added cross reference.
AU-6.2	07/2013	Amended due date and collection process for annual license fees.
AU-1.1.24, AU-1.1.24A and AU-1.1.24B	10/2014	Amended requirements to have a Shari'a Supervisory Board based on the category of investment firm licensee.
AU-1.4.11 and AU-1.4.11B	10/2014	Clarified the meaning of dealing in financial instruments as a principal and added cross reference to approval from CBB's Capital market Supervision Directorate as well as requirements under Module OFS of Volume 6 of the CBB Rulebook.
AU-5.1.7A	10/2014	Clarified that any PPM issued to raise capital must comply with module OFS and is subject to the CBB's Capital Market Supervision Directorate's prior approval.
AU-A.1.11	07/2015	Legal basis updated to reflect Resolution No (23) of 2015.
AU-3.2.1	07/2015	Added cross reference to Module TC.
AU-5.2	07/2015	Amended to be in line with Resolution No (23) of 2015 on Prior Approval Requirements for Approved Persons.
AU-5.5.5	07/2015	Clarified interim arrangements for replacement of approved person.
AU-1.2	01/2016	Clarified general requirements for approved persons.
AU-3	01/2016	Amended to be in line with Resolution No (23) of 2015 on Prior Approval Requirements for Approved Persons.
AU-5.1.4	01/2016	Paragraph deleted as no longer applicable.
AU-5.2	01/2016	Minor amendments to be aligned with other Volumes of the CBB Rulebook.
AU-1.1.18	10/2016	Added subparagraph (d).
AU-1.1.18A	10/2016	Changed 'not limited' to 'in relation'.
AU-1.1.18B	10/2016	Deleted subparagraph (f)
AU-5.2.3	10/2016	Added to Rule new subparagraph (e).
<b>AU-5.6</b>	<b>07/2017</b>	<b>Added new Section on Publication of the Decision to Grant, Cancel or Amend a License</b>



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-A: Introduction</b>

## **AU-A.2 Module History (continued)**

### *Superseded Requirements*

AU-A.2.4 This Module supersedes the following provisions contained in circulars or other regulatory instruments:

Circular / other reference	Provision	Subject
Standard Conditions and Licensing Criteria: investment advisers/brokers	All articles	Scope of license and licensing conditions.
Standard Conditions and Licensing Criteria: broking company	All articles	Scope of license and licensing conditions.
Standard Conditions and Licensing Criteria: stockbrokerage	All articles	Scope of license and licensing conditions.
Circular BC/11/98, dated 27/7/98	All articles	Appointment and suitability of Directors and senior managers ('fit and proper').

AU-A.2.5 Further guidance on the implementation and transition to Volume 4 (Investment business) is given in Module ES (Executive Summary).



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-B:</b>	<b>Scope of Application</b>

## AU-B.1 The Public

AU-B.1.1 The Authorisation requirements in Chapter AU-1 are generally applicable to the public, in that they prevent a person (whether legal or natural) from undertaking certain specified activities if they do not hold the appropriate authorisation from the CBB or marketing any financial services unless specifically allowed to do so by the CBB (see Rule AU-1.1.1).. In addition, those applying for authorisation are also required to comply with the relevant requirements and procedures contained in this Module.

AU-B.1.2 Two types of authorisation are prescribed:

- (i) Any person seeking to provide a regulated investment service within or from the Kingdom of Bahrain must hold the appropriate CBB license (see AU-1.1); and
- (ii) Natural persons wishing to perform a controlled function in an investment firm licensee also require prior CBB approval, as an approved person (see AU-1.2).

AU-B.1.3 [This Paragraph deleted 07/2010.]



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-B:</b>	<b>Scope of Application</b>

## AU-B.2 Licensees and Authorised Persons

AU-B.2.1 Various requirements in Chapters AU-2 to AU-5 inclusive also apply to persons once they have been authorised by the CBB (whether as licensees or approved persons).

AU-B.2.2 Chapter AU-2 applies to investment firm licensees (not just applicants), since licensing conditions have to be met on a continuous basis by licensees. Similarly, Chapter AU-3 applies to approved persons on a continuous basis; it also applies to investment firm licensees seeking an approved person authorisation. Chapter AU-5 contains requirements applicable to licensees, with respect to the starting up of their operations, as well as to licensees and approved persons, with respect to the amendment or cancellation of their authorised status. Finally, Section AU-6.2 imposes annual fees on licensees.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 Licensing

### AU-1.1.1

No person may:

- (a) Undertake (or hold themselves out to undertake) regulated investment services, by way of business, within or from the Kingdom of Bahrain unless duly licensed by the CBB;
- (b) Hold themselves out to be licensed by the CBB unless they have as a matter of fact been so licensed; or
- (c) Market any financial services in the Kingdom of Bahrain unless:
  - (i) Allowed to do by the terms of a license issued by the CBB;
  - (ii) The activities come within the terms of an exemption granted by the CBB by way of a Directive; or
  - (iii) Has obtained the express written permission of the CBB to offer financial services.

### AU-1.1.2

For the purposes of Rule AU-1.1.1(a), please refer to Section AU-1.4 for the definition of ‘regulated investment services’ and ‘by way of business’. Such activities will be deemed to be undertaken within or from the Kingdom of Bahrain if, for example, the person concerned:

- (a) Is incorporated in the Kingdom of Bahrain;
- (b) Uses an address situated in the Kingdom of Bahrain for its correspondence; or
- (c) Directly solicits clients.

### AU-1.1.3

For the purposes of Rule AU-1.1.1(b), persons would be considered in breach of this requirement if they were to trade as, or incorporate a company in Bahrain with a name containing the words (or the equivalents in any language) ‘adviser’, ‘consultant’, or ‘manager’ in combination with “investment”, or ‘portfolio’, without holding the appropriate CBB license or the prior approval of the CBB.

### AU-1.1.3A

In accordance with Resolution No.(16) for the year 2012 and for the purpose of Subparagraph AU-1.1.1(c), the word ‘market’ refers to any promotion, offering, announcement, advertising, broadcast or any other means of communication made for the purpose of inducing recipients to purchase or otherwise acquire financial services in return for monetary payment or some other form of valuable consideration.

### AU-1.1.3B

Persons in breach of Subparagraph AU-1.1.1(c) are considered in breach of Resolution No.(16) for the year 2012 and are subject to penalties under Articles 129 and 161 of the CBB Law (see also Section EN-10.2A).

### AU-1.1.4

**Where a person is licensed under Volumes 1 or 2, i.e. as a bank, then a separate license under Volume 4 is not required in order to undertake activities of the kind specified under Section AU-1.4.**



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 Licensing (continued)

AU-1.1.5 Persons licensed as banks by the CBB may also undertake the specific activities covered by the definition of regulated investment services (such as trading in financial instruments as principal), since these specific activities also form part of the definition of regulated banking services (or regulated Islamic banking services in the case of Islamic banks). In such cases, banks are not required to hold a separate investment firm license.

**AU-1.1.6** Depending on the type of regulated investment services that a person wishes to undertake, applicants must seek to be licensed either as a Category 1, a Category 2 or a Category 3 investment firm.

**AU-1.1.7** Persons wishing to be licensed to undertake regulated investment services within or from the Kingdom of Bahrain must apply in writing to the CBB.

**AU-1.1.8** An application for a license must be in the form prescribed by the CBB and must contain, inter alia:

- (a) A business plan specifying the type of business to be conducted;
- (b) Application forms for all controllers; and
- (c) Application forms for all controlled functions.

AU-1.1.9 The CBB will review the application and duly advise the applicant in writing when it has:

- (a) Granted the application without conditions;
- (b) Granted the application subject to conditions specified by the CBB; or
- (c) Refused the application, stating the grounds on which the application has been refused and the process for appealing against that decision.

AU-1.1.10 Detailed rules and guidance regarding information requirements and processes for licenses can be found in Section AU-5.1. As specified in Paragraph AU-5.1.12, the CBB will provide a formal decision on a license application within 60 calendar days of all required documentation having been submitted in a form acceptable to the CBB.

**AU-1.1.11** All applicants seeking an investment firm license must satisfy the CBB that they meet, by the date of authorisation, the minimum criteria for licensing, as contained in Chapter AU-2. Once licensed, investment firm licensees must maintain these criteria on an on-going basis.



MODULE	AU: Authorisation
CHAPTER	AU-1: Authorisation Requirements

## AU-1.1 Licensing (continued)

### *Investment Firm License Categories*

#### AU-1.1.12

For the purposes of Volume 4 (Investment Business), regulated investment services may be undertaken under three categories of investment firms as follows:

#### *Category 1*

#### AU-1.1.13

For the purposes of Volume 4 (Investment Business), Category 1 investment firms may undertake (subject to Rule AU-1.1.19) any regulated investment service, as listed below:

- (a) Dealing in financial instruments as principal;
- (b) Dealing in financial instruments as agent;
- (c) Arranging deals in financial instruments;
- (d) Managing financial instruments;
- (e) Safeguarding financial instruments (i.e. a custodian);
- (f) Advising on financial instruments; and
- (g) Operating a collective investment undertaking (i.e. an operator).

AU-1.1.14 [This Paragraph was moved and amended to Paragraph AU-1.4.11A in January 2012].

#### *Category 2*

#### AU-1.1.15

For the purposes of Volume 4 (Investment Business), Category 2 investment firms may undertake (subject to Rule AU-1.1.19) any regulated investment service (as listed in Rule AU-1.1.13), *except* that of 'dealing in financial instruments as principal'.

AU-1.1.16 A Category 2 investment firm cannot, therefore, trade in financial instruments for its own account ('dealing in financial instruments as principal'), but it may conduct all other types of regulated investment services, including holding client assets.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-1: Authorisation Requirements</b>

## AU-1.1 Licensing (continued)

### *Category 3*

#### AU-1.1.17

For the purposes of Volume 4 (Investment Business), Category 3 investment firms may undertake (subject to Rules AU-1.1.18 and AU-1.1.19) the following regulated investment services only:

- (a) Arranging deals in financial instruments; and
- (b) Advising on financial instruments.

#### AU-1.1.18

When undertaking either of the regulated investment services listed under Rule AU-1.1.17, Category 3 investment firms:

- (a) Must be independent;
- (b) May not hold any client assets;
- (c) Must refrain from receiving any fees or commissions from any party other than the client; and
- (d) Must not have an 'agency' relationship (tied agent) with an investment provider.

AU-1.1.18A In assessing the independence of a Category 3 investment firm, the CBB will take into account the regulated investment services offered in relation to financial instruments of a related party.

AU-1.1.18B For the purpose of Paragraph AU-1.1.18A, a related party of a Category 3 investment firm includes:

- (a) A controller of the Category 3 investment firm as defined in Module GR;
- (b) A close link of the Category 3 investment firm as defined in Module GR;
- (c) An associate of a controller as defined in Module GR;
- (d) The extended family of a controller including a father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, or grandparent;
- (e) A corporate entity, whether or not licensed or incorporated in Bahrain, where any of the persons identified in Sub-Paragraphs (c) and (d) is a Director or would be considered a controller were the definition of controller set out in Paragraph GR-5.2.1 applied to that corporate entity; and
- (f) (This Subparagraph has been deleted).

### *Combining Regulated Investment Services*

#### AU-1.1.19

Investment firm licensees may combine two or more regulated investment services, providing these fall within the permitted list of services for their investment firm Category, and such combinations are not restricted by Module BC (Business Conduct).

AU-1.1.20 Module BC (Business Conduct) may restrict licensees from undertaking certain combinations of activities, where such combinations potentially create conflicts of interest that could compromise the interests of customers. See Chapter BC-2.





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## AU-1.1 Licensing (continued)

### *Suitability*

**AU-1.1.21** [This Paragraph was deleted in January 2011].

AU-1.1.22 [This Paragraph was deleted in January 2011].

### *Conventional and Islamic Investment Firms*

**AU-1.1.23** Investment firm licensees may deal in both conventional and Islamic financial instruments. Only those investment firm licensees whose operations are fully Shari'a compliant, however, may hold themselves out to be an Islamic investment firm.

**AU-1.1.24** Islamic investment firms are required to comply with relevant AAOIFI standards (see Section AA-4.1).

**AU-1.1.24A** In accordance with Paragraph HC-9.2.1, Category 1 and 2 Islamic investment firms must maintain a Shari'a Supervisory Board, comprised of at least 3 Shari'a board members, to verify that their operations are Shari'a compliant.

**AU-1.1.24B** Category 3 Islamic investment firms must appoint a minimum of one Shari'a advisor or scholar to verify that their operations are Shari'a compliant.

**AU-1.1.25** Investment firm licensees (whether conventional or Islamic) may not accept Shari'a money placements or deposits. They may not enter into Shari'a financing contracts (except where it is an incidental part of assisting a client to buy, sell, subscribe for or underwrite a financial instrument). Finally, they may not offer Shari'a Profit Sharing Investment Accounts (whether restricted or unrestricted).

AU-1.1.26 Shari'a money placements or deposits include money taken under *q'ard* or *al-wadia* contracts. Shari'a financing contracts include contracts such as *murabaha*, *bay muajjal*, *bay islam*, *ijara wa iktina* and *istisna'a*. Profit sharing investment accounts include those accounts undertaken under *mudaraba* and *musharaka* contracts.

AU-1.1.27 The transactions prohibited under Rule AU-1.1.25 may only be undertaken by bank licensees.



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## AU-1.2 Approved Persons

### *General Requirement*

**AU-1.2.1** Investment firm licensee must obtain the CBB's prior written approval for any person wishing to undertake a controlled function in an investment firm licensee. The approval from the CBB must be obtained prior to their appointment, subject to the variations contained in Paragraphs AU-1.2.3 to AU-1.2.5.

**AU-1.2.2** Controlled functions are those functions occupied by board members and persons in executive positions and include:

- (a) Director;
- (b) Chief Executive or General Manager;
- (c) Head of function;
- (d) Compliance officer;
- (e) Money Laundering Reporting Officer;
- (f) [Subparagraph deleted in January 2011];
- (g) Member of Shari'a Supervisory Board (where applicable);
- (h) Financial Instruments Trader; and
- (i) Investment consultant or investment adviser.

**AU-1.2.3** In the case of Bahraini investment firm licensees, prior approval is required for all of the above controlled functions. Combination of the above controlled functions is subject to the requirements contained in Modules HC and RM.

**AU-1.2.4** In the case of overseas investment firm licensees, prior approval is required for controlled functions (b) defined as the 'Branch Manager' of the Bahrain branch (however titled by the licensee), (c), (d), (e), (f), (h) and (i). Combination of the above controlled functions is subject to the requirements contained in Modules HC and RM.

**AU-1.2.5** Approval for controlled function (g) is required for all investment firm licensees undertaking Islamic transactions.

### *Basis for Approval*

AU-1.2.6 Approval under Paragraph AU-1.2.1 is only granted by the CBB, if it is satisfied that the person is fit and proper to hold the particular position in the licensee concerned. 'Fit and proper' is determined by the CBB on a case-by-case basis. The definition of 'fit and proper' and associated guidance is provided in Sections AU-3.1 and AU-3.2 respectively.



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## AU-1.2 Approved Persons (continued)

### *Definitions*

AU-1.2.7

Director is any person who occupies the position of a Director, as defined in Article 173 of the Commercial Companies Law (Legislative Decree No. 21 of 2001).

AU-1.2.8

The fact that a person may have 'Director' in their job title does not of itself make them a Director within the meaning of the definition noted in Paragraph AU-1.2.7. For example, a 'Director of Marketing', is not necessarily a member of the Board of Directors and therefore may not fall under the definition of Paragraph AU-1.2.7.

AU-1.2.9

Investment firm licensees must appoint a person to undertake the function of Chief Executive, General Manager or Managing Director. The Chief Executive or General Manager means a person who is responsible for the conduct of the licensee (regardless of actual title). The Chief Executive or General Manager must be resident in Bahrain. This person is responsible for the conduct of the whole of the firm, or, in the case of an overseas investment firm licensee, for all of the activities of the branch (ref. HC-6.3.4).

AU-1.2.9A

A licensee may appoint a Director on the Board to undertake the responsibility of the Chief Executive or General Manager, i.e a Managing Director, in which case the appointment of a Chief Executive or General Manager in addition to the Managing Director will not be permitted.

AU-1.2.9B

The Chief Executive, General Manager or Managing Director of the licensee:

- (a) Should be fully responsible for the executive management and performance of the licensee, within the framework of delegated authorities set by the Board;
- (b) Must devote full-time working hours to the licensee; and
- (c) Must not be employed at any other firm.

AU-1.2.9C

The Chairman of the Board may not undertake any executive role, including that of Chief Executive, General Manager or Managing Director.

AU-1.2.9D

The Chief Executive Officer or Managing Director are not permitted, at any time to assume Chairmanship or Deputy Chairmanship of the Board.

AU-1.2.9E

Residency requirements apply to Chief Executives, General Managers or Managing Directors: see Section AU-2.2.



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## AU-1.2 Approved Persons (continued)

**AU-1.2.10** Head of function means a person who exercises major managerial responsibilities, is responsible for a significant business or operating unit, or has senior managerial responsibility for maintaining accounts or other records of the licensee.

AU-1.2.11 Whether a person is a head of function will depend on the facts in each case and is not determined by the presence or absence of the word in their job title. Examples of head of function might include, depending on the scale, nature and complexity of the business, a deputy Chief Executive; heads of departments such as Risk Management, Compliance or Internal Audit; or the Chief Financial Officer.

**AU-1.2.12** Financial Instruments Trader means a person who is engaged in buying or selling financial instruments.

**AU-1.2.13** An investment consultant or investment adviser refers to the function of advising a client or potential client with respect to buying, selling, subscribing for or underwriting a particular financial instrument or exercising any right conferred by such a financial instrument.

AU-1.2.13A If a person is merely responsible for maintaining a client relationship and providing administrative support without giving advice, such person is not considered an investment consultant nor an investment adviser and need not be approved by the CBB, as such a function would not be considered a controlled function.

**AU-1.2.13B** Any other staff of an investment firm licensee must not provide advice to a client or potential client, as defined in Paragraph AU-1.2.13. Other approved persons, must not provide advice to a client or potential client, as defined in Paragraph AU-1.2.13, unless such approved person has been specifically approved by the CBB as an investment consultant or investment adviser, in addition to their initial controlled function.

**AU-1.2.14** Where a firm is in doubt as to whether a function should be considered a controlled function it must discuss the case with the CBB.

**AU-1.2.15** The controlled function of compliance officer is defined in accordance with the compliance function under Section HC-6.5. The controlled functions of Money Laundering Reporting Officer/Deputy Money Laundering Reporting Officer are defined under Chapter FC-3.



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## AU-1.2 Approved Persons (continued)

### AU-1.2.16

All investment firm licensees must designate an employee, of appropriate standing and resident in Bahrain, as compliance officer. The duties of the compliance officer include:

- (a) Having responsibility for oversight of the licensee's compliance with the requirements of the CBB; and
- (b) Reporting to the licensee's Board in respect of that responsibility.



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**AU-1.3 [This Section deleted 07/2007]**



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## AU-1.4 Definition of Regulated Investment Services

**AU-1.4.1** For the purposes of Volume 4 (Investment Business), regulated investment services are any of the activities listed under Paragraph AU-1.1.13, as further defined in this Section, carried on by way of business.

**AU-1.4.2** For the purposes of Volume 4 (Investment Business), carrying on a regulated investment service by way of business means:

- (a) Undertaking one or more of the activities listed under Paragraph AU-1.1.13 on a professional basis and for commercial gain;
- (b) Holding oneself out as willing and able to engage in that activity; or
- (c) Regularly soliciting other persons to engage in transactions constituting that activity.

### *General Exclusions*

**AU-1.4.3** A person does not carry on an activity constituting a regulated investment service if the activity:

- (a) Is carried on in the course of a business which does not ordinarily constitute the carrying on of a regulated activity;
- (b) May reasonably be regarded as a necessary part of any other services provided in the course of that business; and
- (c) Is not remunerated separately from the other services.

**AU-1.4.4** A person does not carry on an activity constituting a regulated investment service if the person is a body corporate and carries on that activity solely with or for other bodies corporate that are members of the same group.

**AU-1.4.5** A person does not carry on an activity constituting a regulated investment service if such person carries on an activity with or for another person, and they are both members of the same family.

**AU-1.4.6** A person does not carry on an activity constituting a regulated investment service if the sole or main purpose for which the person enters into the transaction is to limit any identifiable risks arising in the conduct of his business, providing the business conducted does not itself constitute a regulated activity.

AU-1.4.7 For example, an industrial company entering into an interest rate swap to switch floating-rate borrowings for fixed rate borrowings, in order to manage interest rate risk, would not be considered to be dealing in financial instruments as principal, and would not therefore be required to be licensed as an investment firm.



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#### AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.8** A person does not carry on an activity constituting a regulated investment service if that person enters into that transaction solely as a nominee for another person, and acts under instruction from that other person; or is an employee or Director of a person who is an investment firm licensee.

**AU-1.4.9** A person does not carry on an activity constituting a regulated investment service if that person is a government body charged with the management of financial instruments on behalf of a government or public body.

**AU-1.4.10** A person does not carry on an activity constituting a regulated investment service if that person is an exempt person, as specified by Royal decree.

##### *Dealing in Financial Instruments as Principal*

**AU-1.4.11** Dealing in financial instruments as principal means buying, selling, subscribing for or underwriting any financial instrument on own account, including underwriting transactions.

**AU-1.4.11A** Only Category 1 investment firms are permitted to underwrite the issuance of financial instruments. However, the CBB will only permit such activity if the licensee has the financial ability to absorb the size of the commitment.

AU-1.4.11B In assessing the financial ability of a licensee, the CBB will consider, amongst other factors, the licensee's capital adequacy, its capacity to undertake the activity, and its track record in complying with applicable regulatory requirements. Any underwriting activities require the prior approval of the CBB's Capital Market Supervision Directorate and are subject to Module OFS (Offering of Securities) of Volume 6 of the CBB Rulebook.

**AU-1.4.12** A person carries on an activity specified in Rule AU-1.4.11 only if he is a market maker or deals on own account on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them.

AU-1.4.13 A licensee that carries on an activity of the kind specified by Rule AU-1.4.11 is authorised to act as a market maker and has the ability to deal in financial instruments on terms determined by it. Such a licensee undertakes such an activity using its own financial resources, but may also control client assets or liabilities in the course of its designated investment business.





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## AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.14** A person does not carry on an activity specified in Rule AU-1.4.11 if the activity relates to the person issuing his own shares/debentures, warrants or bonds.

**AU-1.4.15** The activity specified in Rule AU-1.4.11 may also include providing credit, where it is an incidental part of buying, selling, subscribing for or underwriting financial instruments. However, the amount provided as credit must be paid out of the investment firm licensee's capital and not out of clients' assets.

AU-1.4.16 Examples of the type of 'incidental' credit activity provided for under Rule AU-1.4.15 include the provision of margin facilities on trading accounts or credit elements intrinsic to a structured or leveraged financial product.

### *Dealing in Financial Instruments as Agent*

**AU-1.4.17** Dealing in financial instruments as agent means buying, selling, subscribing for or underwriting financial instruments on behalf of a client.

AU-1.4.18 A licensee that carries on an activity of the kind specified by Rule AU-1.4.17 is not a market maker, does not have the ability to deal in financial instruments on terms determined by it and does not use its own financial resources for the purpose of buying, selling, subscribing for or underwriting financial instruments. Such a licensee may however receive or hold client assets in connection with a client transaction, in its capacity as agent.

### *Arranging Deals in Financial Instruments*

**AU-1.4.19** Arranging deals in financial instruments means making arrangements on behalf of another person, whether as principal or agent, buying, selling or subscribing for deals in financial instruments. This activity does not include the execution of a deal for which the arrangement has been made.

AU-1.4.19A For Category 3 Investment Firms, the activity of arranging the deals is limited to handling the administration arrangements only.

**AU-1.4.20** A person does not carry on an activity specified in Rule AU-1.4.19 if the arrangement does not bring about the transaction to which the arrangement relates.

**AU-1.4.21** A person does not carry on an activity specified in Rule AU-1.4.19 if a person's activities are limited solely to introducing clients to licensees.



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## AU-1.4 Definition of Regulated Investment Services (continued)

AU-1.4.22 The exclusion in Rule AU-1.4.21 does not apply if the agent receives from any person, other than the client, any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction. Thus, if A receives a commission from B for arranging credit or deals in investment for C, the exclusion in Rule AU-1.4.21 does not apply.

**AU-1.4.23** A person does not carry on an activity specified in Rule AU-1.4.19 merely by providing the means of communication between two parties to a transaction.

**AU-1.4.24** A person does not carry on an activity specified in Rule AU-1.4.19 if they operate an exchange, duly recognised and authorised by the CBB.

AU-1.4.25 The BFX, as a licensed exchange, is not therefore classed as an investment firm licensee subject to Volume 4 (Investment Business). It is subject to separate rules issued by the CBB (see Volume 6 of the CBB Rulebook).

AU-1.4.26 Negotiating terms for an investment on behalf of a client is an example of an activity which may be regarded as activities of the kind specified in Rule AU-1.4.19.

AU-1.4.27 The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity of the kind specified in Rule AU-1.4.19:

- (a) Appointing professional advisers;
- (b) Preparing a prospectus/business plan;
- (c) Identifying potential sources of funding;
- (d) Assisting investors/subscribers/borrowers to complete and submit application forms; or
- (e) Receiving application forms for processing/checking and/or onward transmission.

**AU-1.4.28** The activity specified in Rule AU-1.4.19 may also include arranging credit, where it is an incidental part of assisting a client to buy, sell, subscribe for or underwrite any financial instrument.

AU-1.4.29 Under Rule AU-1.4.28, arranging credit is an activity specified in Rule AU-1.4.19, only where it forms part of other arrangements to assist a client to buy, sell, subscribe for or underwrite a financial instrument. The activity of solely arranging credit is not a regulated activity for the purposes of Rule AU-1.4.19.

### *Managing Financial Instruments*

**AU-1.4.30** Managing financial instruments means managing on a discretionary basis financial instruments on behalf of another person.

AU-1.4.31 Activities involving initiating and carrying out investment transactions on behalf of a client on a discretionary basis are included under the definition of Rule AU-1.4.30.



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#### AU-1.4 Definition of Regulated Investment Services (continued)

##### *Safeguarding Financial Instruments (i.e. Custodian)*

**AU-1.4.32** Safeguarding financial instruments means the safeguarding of financial instruments for the account of clients.

**AU-1.4.33** A person undertaking an activity of the kind specified under Rule AU-1.4.32 may also be engaged in the administration of financial instruments, as defined in CBB Rulebook Volume 5 Module AU (Administrators) Paragraph AU-1.1.11, including related services such as cash/collateral management, given that strict adherence to segregation of duties is observed.

**AU-1.4.34** A person undertaking an activity of the kind specified under Rule AU-1.4.32 cannot execute negotiable instruments such as cheques on behalf of a client.

**AU-1.4.35** A person does not carry on an activity specified in Rule AU-1.4.32 if the person receives documents relating to a financial instrument for the purpose of onward transmission to, from or at the direction of the person to whom the financial instrument belongs; or else is simply providing a physical safekeeping service such as a deed box.

**AU-1.4.36** A person does not carry on an activity specified in Rule AU-1.4.32 if a third person, namely a qualifying custodian, accepts responsibility with regard to the financial instrument.

**AU-1.4.37** A 'qualifying custodian' is a licensee who has permission to carry on an activity of the kind specified in Rule AU-1.4.32.

**AU-1.4.38** A person does not carry on an activity specified in Rule AU-1.4.32 if they are managing a central depository, which is part of an exchange recognised by the CBB.

AU-1.4.39 The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity of the kind specified under Rule AU-1.4.32:

- (a) Providing information as to the number of units or the value of any assets safeguarded; and
- (b) Converting currency.

AU-1.4.40 [This Paragraph deleted 07/2007.]



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## AU-1.4 Definition of Regulated Investment Services (continued)

### *Advising on Financial Instruments*

#### AU-1.4.41

Advising on financial instruments means giving advice to an investor or potential investor (or a person in his capacity as an agent for an investor or potential investor) on the merits of buying, selling, subscribing for or underwriting a particular financial instrument or exercising any right conferred by such a financial instrument.

#### AU-1.4.42

The activity defined in Rule AU-1.4.41 above does not include advising on mergers and acquisitions, unless otherwise agreed with the CBB on a case by case basis.

#### AU-1.4.43

The activity defined in Rule AU-1.4.41 above does not include advising on corporate finance.

#### AU-1.4.44

The following are examples of activities, which may be regarded as an activity as defined by Rule AU-1.4.41:

- (a) A person may offer to tell a client when shares reach a certain value on the basis that when the price reaches that value it would be a good time to buy or sell them;
- (b) Recommendation on the size or timing of transactions; and
- (c) Advice on the suitability of the financial instrument, or on the characteristics or performance of the financial instrument or credit facility concerned.

#### AU-1.4.45

A person does not carry on an activity specified in Rule AU-1.4.41 by giving advice in any newspaper, journal, magazine, broadcast services or similar service in any medium if the principal purpose of the publication or service, taken as a whole, is neither:

- (a) That of giving advice of the kind mentioned in Rule AU-1.4.41; nor
- (b) That of leading or enabling persons to buy, sell, subscribe for or underwrite a financial instrument.

#### AU-1.4.46

The following are examples of activities which, when taken in isolation, are unlikely to be regarded as an activity as defined by Rule AU-1.4.41:

- (a) Explaining the structure or the terms and conditions of a financial instrument or credit facility;
- (b) Valuing financial instruments for which there is no ready market;
- (c) Circulating company news or announcements;
- (d) Comparing the benefits and risks of one financial instrument to another; and
- (e) Advising on the likely meaning of uncertain provisions in an agreement relating to, or the terms of, a financial instrument or on the effect of contractual terms and their commercial consequences or on terms that are commonly accepted in the market.



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#### AU-1.4 Definition of Regulated Investment Services (continued)

**AU-1.4.47** A person undertaking an activity of the kind specified under Rule AU-1.4.41 cannot accept or hold client assets or execute negotiable instruments such as cheques on behalf of a client.

##### *Operating a Collective Investment Undertaking (i.e. operator)*

**AU-1.4.48** Operating a collective investment undertaking (“CIU”) means operating, establishing or winding up a collective investment undertaking.

**AU-1.4.49** For the purposes of Rule AU-1.4.48, a collective investment undertaking is an undertaking the sole object of which is the collective investment of capital raised from the public in financial instruments or other assets and which operates on the basis of risk-spreading; and the holdings of which are re-purchased or redeemed, directly or indirectly, out of those undertakings’ assets.

AU-1.4.50 A person does not carry on an activity specified in Rule AU-1.4.48 if the activity relates to the person establishing or winding up a collective investment undertaking, and that activity may be reasonably regarded as a necessary in the course of providing legal services or providing accounting services.

AU-1.4.51 In the case of CIUs whose holdings are listed and traded on a stock exchange (such as a closed-ended fund), actions taken by the CIU to align the stock exchange value of its holdings and its net asset value is taken as equivalent to the repurchase or redemption specified in Rule AU-1.4.49. The definition in Rule AU-1.4.49 thus recognises both open-ended funds and closed-ended funds: unit trusts, investment trusts, mutual funds, SICAV and collective investment schemes are all examples of CIUs. CIUs may also be constituted under contract law (as common funds managed by management companies); trust law (as unit trusts); or under statute (as investment companies).

AU-1.4.52 See Volume 7 (CIU) of the CBB Rulebook, for the rules that apply to CIUs domiciled in Bahrain or domiciled in an overseas jurisdiction, and offered to investors resident in Bahrain. These rules also contain requirements that apply to the operators of such CIUs.

AU-1.4.53 [Paragraph deleted 07/2006.]

AU-1.4.54 [Paragraph deleted 07/2006.]



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## AU-1.5 Definition of Financial Instruments

For the purposes of Volume 4, a financial instrument means any of the following:

### *Transferable Securities*

#### AU-1.5.1

Those classes of securities which are negotiable, with the exception of instruments of payment. Transferable securities include:

- (a) Shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) Bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
- (c) Warrants;
- (d) Any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

### *Islamic Financial Instruments*

#### AU-1.5.2

Those financial instruments – as defined elsewhere in Section AU-1.5 – that are shari'a compliant.

### *Money-market Instruments*

#### AU-1.5.3

Those classes of instruments which are normally dealt in on the money market, such as treasury bills and commercial papers and excluding instruments of payment.

### *Holdings in Collective Investment Undertakings*

#### AU-1.5.4

Rights or interests (however described) of the participants in a collective investment undertaking.

### *Derivative Contracts other than Commodity Derivatives*

#### AU-1.5.5

Options, futures, forwards, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.



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## AU-1.5 Definition of Financial Instruments (continued)

### *Derivative Contracts relating to commodities Settled in Cash*

**AU-1.5.6** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

### *Derivative Contracts Relating to Commodities*

**AU-1.5.7** Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled.

**AU-1.5.8** Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in Rule AU-1.5.7 above and not being for commercial purposes, which have the characteristics of other derivative financial instruments.

### *Credit Derivatives*

**AU-1.5.9** Over the counter derivative instruments, which provide for the transfer of credit risk.

### *Financial Contracts for Differences*

**AU-1.5.10** Comprise rights under a contract for differences, or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in:

- (a) The value or price of investment or property of any description;
- (b) Any currency;
- (c) The rate of interest in any currency or any index of such rates (including interest rate options);
- (d) The level of any index which is derived for the prices of an investment or physical commodity (including index options); or
- (e) Any combination of the above.



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## AU-1.5 Definition of Financial Instruments (continued)

**AU-1.5.11** The following are excluded from this definition of contracts for differences:

- (a) Contracts where the parties intend that the profit is to be secured or the loss to be avoided by taking delivery of property; and
- (b) Contracts under which money is received by way of deposit on terms that any return to be paid on the sum deposited will be calculated by reference to an index, interest rate, exchange rate or other factor.

### *Other Derivative Contracts*

**AU-1.5.12** Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments.

### *Interests in Real Estate Property*

**AU-1.5.13** Any financial instrument giving right to or interests in real estate property other than owner occupied properties. This excludes the taking of charges over real estate property.

### *Certificates Representing Certain Securities*

**AU-1.5.14** Certificates or other instruments which confer contractual or property rights:

- (a) In respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
- (b) The transfer of which may be effected without requiring the consent of that person.

### *Rights or Interests in Financial Instruments*

**AU-1.5.15** Rights to or interests in all financial instruments under Section AU-1.5.





<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.1 Condition 1: Legal Status

### *Category 1 and 2 Investment Firms*

#### AU-2.1.1

The legal status of a Category 1 or 2 investment firm licensee must be:

- (i) A Bahraini joint stock company (BSC); or
- (ii) A branch resident in Bahrain of a company incorporated under the laws of its territory of incorporation and (where local regulation so requires) authorised as market-maker in that territory.

### *Category 3 Investment Firms*

#### AU-2.1.2

The legal status of a Category 3 investment firm licensee must be:

- (i) A Bahraini joint stock company (BSC);
- (ii) A Bahraini company with limited liability ('WLL'); or
- (iii) A branch resident in Bahrain of a company incorporated under the laws of its territory of incorporation and (where local regulation so requires) authorised as market-maker in that territory.

#### AU-2.1.3

Where the investment firm licensee is a branch of an overseas investment firm, an application for licensing will be considered after extensive enquiries into the firm's shareholders, management structure, financial position, its activities and how these activities are regulated.



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.2 Condition 2: Mind and Management

### AU-2.2.1

Investment firm licensees with their Registered Office in the Kingdom of Bahrain must maintain their Head Office in the Kingdom. Overseas investment firm licensees must maintain a local management presence and premises in the Kingdom appropriate to the nature and scale of their activities.

### AU-2.2.2

In assessing the location of an investment firm licensee's Head Office, the CBB will take into account the residency of its Directors and senior management.

### AU-2.2.3

The CBB requires that all approved persons occupying controlled functions outlined in Paragraph AU-1.2.2, except for Subparagraphs (a) director and (g) member of Shari'a Supervisory Board, be resident in Bahrain.



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

### AU-2.3 Condition 3: Controllers and Close Links

#### AU-2.3.1

Investment firm licensees must satisfy the CBB that their controllers are suitable and pose no undue risks to the licensee. Investment firm licensees must also satisfy the CBB that their close links do not prevent the effective supervision of the investment firm licensee by the CBB and otherwise pose no undue risks to the licensee.

#### AU-2.3.2

For Category 1 and Category 2 investment firm licensees, at least one of the controllers of an investment firm licensee must be a reputable financial institution of financial soundness, operating within a regulated jurisdiction, with a legal structure, all of which must be acceptable to the CBB.

#### AU-2.3.3

Chapters GR-5 and GR-6 contain the CBB's requirements and definitions regarding controllers and close links.

#### AU-2.3.4

In summary, controllers are persons who directly or indirectly are significant shareholders in an investment firm licensee, or who are otherwise able to exert significant influence on the investment firm licensee. The CBB seeks to ensure that controllers pose no significant risks to the licensee. In general terms, controllers are assessed in terms of their financial standing, their judicial and regulatory record, and standards of business and (where relevant) personal probity.

#### AU-2.3.5

An investment firm licensee has close links with its subsidiaries, with its parent undertakings, and with subsidiaries of its parent undertakings. It also has close links with any entity in which the licensee, its subsidiaries, its parent undertakings, and the subsidiaries of its parent undertakings has an equity interest of more than 20% (either in terms of capital or voting rights). The CBB seeks to ensure that these closely linked entities do not pose any material financial, reputational or other risks to the licensee. The CBB also seeks to ensure that the structure and geographical spread of the group is such that it is subject to adequate scrutiny at group level.

#### AU-2.3.6

In all cases, when judging applications from existing groups, the CBB will have regard to the reputation and financial standing of the group as a whole. Where relevant, the CBB will also take into account the extent and quality of supervision applied to overseas members of the group and take into account any information provided by other supervisors in relation to any member of the group.



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.4 Condition 4: Board and Employees

**AU-2.4.1** Those nominated to carry out controlled functions must satisfy CBB's approved person's requirements.

AU-2.4.2 The definition of controlled functions is contained in AU-1.2, whilst AU-3 sets out CBB's approved persons requirements. Applications for approved person status must be submitted using the prescribed approved persons form.

**AU-2.4.3** The investment firm licensee's staff, taken together, must collectively provide a sufficient range of skills and experience to manage the affairs of the licensee in a sound and prudent manner. Investment firm licensees must ensure their employees meet any training and competency requirements specified by the CBB.

AU-2.4.4 The CBB's training and competency requirements are contained in Module TC (Training and Competency).



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.5 Condition 5: Financial Resources

### AU-2.5.1

Investment firm licensees must maintain a level of financial resources, as agreed with the CBB, adequate for the level of business proposed. The level of financial resources held must exceed at all times the minimum requirements contained in Module CA (Capital Adequacy), as specified for the Category of investment license held.

### AU-2.5.2

[This Paragraph deleted 07/2010.]

### AU-2.5.3

Overseas applicants are required to provide written confirmation from their head office that the head office will provide financial support to the branch sufficient to enable it to meet its obligations as and when they fall due. Overseas applicants must also demonstrate that the company as a whole is adequately resourced for the amount of risks undertaken.



MODULE	AU: Authorisation
CHAPTER	AU-2: Licensing Conditions

## AU-2.6 Condition 6: Systems and Controls

**AU-2.6.1** Investment firm licensees must maintain systems and controls that are, in the opinion of the CBB, adequate for the scale and complexity of their activities. These systems and controls must meet the minimum requirements contained in Modules HC (High-level Controls) and RM (Risk Management), as specified for the Category of investment firm license held.

**AU-2.6.2** Investment firm licensees must maintain adequate segregation of responsibilities in their staffing arrangements, to protect against the misuse of systems or errors. Such segregation should ensure that no single individual has control over all stages of a transaction.

**AU-2.6.3** Investment firm licensees must maintain systems and controls that are, in the opinion of the CBB, adequate to address the risks of financial crime occurring in the licensee. These systems and controls must meet the minimum requirements contained in Module FC (Financial Crime), as specified for the Category of investment firm license held.

**AU-2.6.4** As part of the licensing approval process, applicants must demonstrate in their business plan (together with any supporting documentation) what risks their business would be subject to and how they would manage those risks. Applicants may also be asked to provide an independent assessment of the appropriateness of their systems and controls to the CBB.

**AU-2.6.5** Investment firm licensees must, in connection with any client assets received in the course of their business, establish and maintain separate client accounts, segregated from those used for their own funds, as required in Module CL.



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.7 Condition 7: External Auditors

### AU-2.7.1

Investment firm licensees must appoint external auditors, subject to prior CBB approval. The minimum requirements regarding auditors contained in Module AA (Auditors and Accounting Standards) must be met.

### AU-2.7.2

[This Paragraph deleted 07/2010.]



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-2:</b>	<b>Licensing Conditions</b>

## AU-2.8 Condition 8: Other Requirements

### *Books and Records*

**AU-2.8.1** Investment firm licensees must maintain comprehensive books of accounts and other records, which must be available for inspection within the Kingdom of Bahrain by the CBB, or persons appointed by the CBB, at any time. Investment firm licensees must comply with the minimum record-keeping requirements contained in Module GR. Books of accounts must comply with IAS (and relevant AAOIFI) standards.

### *Provision of Information*

**AU-2.8.2** Investment firm licensees must act in an open and cooperative manner with the CBB. Investment firm licensees must meet the regulatory reporting and public disclosure requirements contained in Modules BR and PD respectively.

### *General Conduct*

**AU-2.8.3** Investment firm licensees must conduct their activities in a professional and orderly manner, in keeping with good market practice standards. Investment firm licensees must comply with the general standards of business conduct contained in Module PB, as well as the standards relating to treatment of customers contained in Module BC.

### *License Fees*

**AU-2.8.4** Investment firm licensees must comply with any license fee requirements applied by the CBB.

AU-2.8.5 License fee requirements are contained in Chapter AU-6.





MODULE	AU:	Authorisation
CHAPTER	AU-2:	Licensing Conditions

## AU-2.8 Condition 8: Other Requirements (continued)

### *Additional Conditions*

**AU-2.8.6** Investment firm licensees must comply with any other specific requirements or restrictions imposed by the CBB on the scope of their license.

AU-2.8.7 When granting a license, the CBB specifies the regulated investment services that the licensee may undertake and the category of investment firm license granted. Licensees must respect the scope of their license. AU-5.4 sets out the process for varying the scope of an authorisation, should a licensee wish to undertake new regulated investment services.

AU-2.8.8 In addition, the CBB may vary existing requirements or impose additional restrictions or requirements, beyond those already specified in Volume 4, to address specific risks.



MODULE	AU: Authorisation
CHAPTER	AU-3: Approved Persons Conditions

## AU-3.1 Condition 1: 'Fit and Proper'

**AU-3.1.1** Licensees seeking an approved person authorisation for an individual, must satisfy the CBB that the individual concerned is 'fit and proper' to undertake the controlled function in question.

AU-3.1.2 The authorisation requirement for persons nominated to carry out controlled functions is contained in Section AU-1.2. The authorisation process is described in Section AU-5.2.

**AU-3.1.3** Each applicant applying for approved person status and those individuals occupying approved person positions must comply with the following conditions:

- (a) Has not previously been convicted of any felony or crime that relates to his/her honesty and/or integrity unless he/she has subsequently been restored to good standing;
- (b) Has not been the subject of any adverse finding in a civil action by any court or competent jurisdiction, relating to fraud;
- (c) Has not been adjudged bankrupt by a court unless a period of 10 years has passed, during which the person has been able to meet all his/her obligations and has achieved economic accomplishments;
- (d) Has not been disqualified by a court, regulator or other competent body, as a director or as a manager of a corporation;
- (e) Has not failed to satisfy a judgement debt under a court order resulting from a business relationship;
- (f) Must have personal integrity, good conduct and reputation;
- (g) Has appropriate professional and other qualifications for the controlled function in question (see Appendix TC-1 in Module TC (Training and Competency)); and
- (h) Has sufficient experience to perform the duties of the controlled function (see Appendix TC-1 in Module TC (Training and Competency)).



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-3: Approved Persons Conditions</b>

### AU-3.1 Condition 1: 'Fit and Proper' (continued)

AU-3.1.4 In assessing the conditions prescribed in Rule AU-3.1.3, the CBB will take into account the criteria contained in Section AU-3.2. The CBB reviews each application on a case-by-case basis, taking into account all relevant circumstances. A person may be considered 'fit and proper' to undertake one type of controlled function but not another, depending on the function's job size and required levels of experience and expertise. Similarly, a person approved to undertake a controlled function in one investment firm licensee may not be considered to have sufficient expertise and experience to undertake nominally the same controlled function but in a much bigger licensee.

AU-3.1.5 In assessing a person's fitness and propriety, the CBB will also consider previous professional and personal conduct (in Bahrain or elsewhere) including, but not limited to, the following:

- (a) The propriety of a person's conduct, whether or not such conduct resulted in a criminal offence being committed, the contravention of a law or regulation, or the institution of legal or disciplinary proceedings;
- (b) A conviction or finding of guilt in respect of any offence, other than a minor traffic offence, by any court or competent jurisdiction;
- (c) Any adverse finding in a civil action by any court or competent jurisdiction, relating to misfeasance or other misconduct in connection with the formation or management of a corporation or partnership;
- (d) Whether the person, or any body corporate, partnership or unincorporated institution to which the applicant has, or has been associated with as a director, controller, manager or company secretary been the subject of any disciplinary proceeding, investigation or fines by any government authority, regulatory agency or professional body or association;
- (e) The contravention of any financial services legislation;
- (f) Whether the person has ever been refused a license, authorisation, registration or other authority;
- (g) Dismissal or a request to resign from any office or employment;
- (h) Whether the person has been a Director, partner or manager of a corporation or partnership which has gone into liquidation or administration or where one or more partners have been declared bankrupt whilst the person was connected with that partnership;
- (i) The extent to which the person has been truthful and open with supervisors; and
- (j) Whether the person has ever entered into any arrangement with creditors in relation to the inability to pay due debts.

AU-3.1.6 With respect to Paragraph AU-3.1.5, the CBB will take into account the length of time since any such event occurred, as well as the seriousness of the matter in question.

**AU-3.1.7** Approved persons undertaking a controlled function must act prudently, and with honesty, integrity, care, skill and due diligence in the performance of their duties. They must avoid conflicts of interest arising whilst undertaking a controlled function.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-3: Approved Persons Conditions</b>

### **AU-3.1 Condition 1: ‘Fit and Proper’ (continued)**

AU-3.1.8 In determining where there may be a conflict of interest arising, factors that may be considered will include whether:

- (a) A person has breached any fiduciary obligations to the company or terms of employment;
- (b) A person has undertaken actions that would be difficult to defend, when looked at objectively, as being in the interest of the licensee; and
- (c) A person has failed to declare a personal interest that has a material impact in terms of the person’s relationship with the licensee.

AU-3.1.9 Further guidance on the process for assessing a person’s ‘fit and proper’ status is given in Module EN (Enforcement): see Chapter EN-8.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-3: Approved Persons Conditions</b>

**AU-3.2 [This Section was deleted in January 2016]**

AU-3.2.1 [This Paragraph was deleted in January 2016.]

AU-3.2.2 [This Paragraph was deleted in January 2016.]

AU-3.2.3 [This Paragraph was moved to Paragraph AU-3.1.9 in January 2016].



<b>MODULE</b>	<b>AU:</b>	<b>Authorisation</b>
<b>CHAPTER</b>	<b>AU-4:</b>	<b>[This Chapter deleted 07/2007]</b>



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing

### *Application Form and Documents*

**AU-5.1.1** Applicants for a license must submit a duly completed Form 1 (Application for a License), under cover of a letter signed by an authorised signatory of the applicant marked for the attention of the Director, Licensing and Policy Directorate. The application must be accompanied by the documents listed in Rule AU-5.1.5, unless otherwise directed by the CBB.

AU-5.1.2 Articles 44 to 47 of the CBB Law govern the licensing process. This prescribes a single stage process, with the CBB required to take a decision within 60 calendar days of an application being deemed complete (i.e. containing all required information and documents). See below, for further details on the licensing process and time-lines.

AU-5.1.3 References to applicant mean the proposed licensee seeking authorisation. An applicant may appoint a representative – such as a law firm or professional consultancy – to prepare and submit the application. However, the applicant retains full responsibility for the accuracy and completeness of the application, and is required to certify the application form accordingly. The CBB also expects to be able to liaise directly with the applicant during the authorisation process, when seeking clarification of any issues.

AU-5.1.4 [This Paragraph was deleted in January 2016.]

**AU-5.1.5** Unless otherwise directed by the CBB, the following documents must be provided in support of a Form 1:

- (a) A duly completed Form 2 (Application for Authorisation of Controller) for each controller of the proposed licensee;
- (b) A duly completed Form 3 (Application for Approved Person status), for each individual proposed to undertake controlled functions (as defined in Rule AU-1.2.2) in the proposed licensee;
- (c) A comprehensive business plan for the application, addressing the matters described in AU-5.1.6;
- (d) For overseas companies, a copy of the company's current commercial registration or equivalent documentation;
- (e) Where the applicant is an existing Bahraini company, a copy of the applicant's commercial registration certificate;



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing (continued)

### *Application Form and Documents (continued)*

#### AU-5.1.5 (continued)

- (f) A certified copy of a Board resolution of the applicant, confirming its decision to seek a CBB investment firm license;
- (g) Details of the proposed licensee's close links, if any, as defined under Chapter GR-6;
- (h) In the case of applicants that are part of a regulated group, a letter of non-objection to the proposed license application from the applicant's lead supervisor, together with confirmation that the group is in good regulatory standing and is in compliance with applicable supervisory requirements, including those relating to capital requirements;
- (i) In the case of branch applicants, a letter of non-objection to the proposed license application from the applicant's home supervisor, together with confirmation that the applicant is in good regulatory standing and the company concerned is in compliance with applicable supervisory requirements, including those relating to capital;
- (j) In the case of branch applicants, copies of the audited financial statements of the applicant (head office) for the three years immediately prior to the date of application;
- (k) In the case of applicants that are part of a group, copies of the audited financial statements of the applicant's group, for the three years immediately prior to the date of application;
- (l) In the case of applicants not falling under either (j) or (k) above, copies of the audited financial statements of the applicant's major shareholder (where they are a legal person), for the three years immediately prior to the date of application;
- (m) In the case of applicants seeking to raise part of their capital through a private placement, a draft of the relevant private placement memorandum, together with a formal, independent legal opinion confirming that the memorandum complies with all applicable capital markets laws and regulations;
- (n) A copy of the applicant's memorandum and articles of association (in draft form for applicants creating a new company) addressing the matters described in AU-5.1.8;
- (o) [Subparagraph deleted in January 2008]; and
- (p) [Subparagraph deleted in January 2008].

AU-5.1.5A The CBB, in its complete discretion may ask for a guarantee from the applicant's controlling or major shareholders on a case by case basis as it deems appropriate/necessary as part of the required documents to be submitted as mentioned in Paragraph AU-5.1.5 above.





<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing (continued)

### *Application Form and Documents (continued)*

#### **AU-5.1.6**

The business plan submitted in support of an application must include:

- (a) An outline of the history of the applicant and its shareholders;
- (b) The reasons for applying for a license, including the applicant's strategy and market objectives;
- (c) The proposed type of activities to be carried on by the applicant in/from the Kingdom of Bahrain;
- (d) The proposed Board and senior management of the applicant and the proposed organisational structure of the applicant;
- (e) An independent assessment of the risks that may be faced by the applicant, together with the proposed systems and controls framework to be put in place for addressing those risks and to be used for the main business functions; and
- (f) An opening balance sheet for the applicant, together with a three-year financial projection, with all assumptions clearly outlined, demonstrating that the applicant will be able to meet applicable capital adequacy requirements.

#### AU-5.1.7

In the case of applicants seeking to raise capital (refer to AU-5.1.5(m)), the CBB's review is aimed at checking that the proposed private placement complies with applicable capital markets laws and regulations, and that the information contained in the private placement memorandum ('PPM') is consistent with the information provided in the license application. The CBB's review does not in any way constitute an approval or endorsement as to any claims made in the PPM regarding the future value of the company concerned. Note also that the CBB will not license applicants without a core group of sponsoring shareholders (who can demonstrate a strong business track record with relevant expertise), and where failure of the private placement to raise its targeted amount would leave the institution unable to comply with the CBB's minimum capital requirements. The CBB will normally expect core shareholders to account for at least 40% of the applicant's initial proposed total capital.

#### **AU-5.1.7A**

The PPM must comply with the requirements contained under Module OFS (Offering of Securities) of Volume 6 of the CBB Rulebook and is subject to the CBB's Capital Market Supervision Directorate's prior approval.

#### **AU-5.1.8**

The applicant's memorandum and articles of association must explicitly provide for it to undertake the activities proposed in the license application, and must preclude the applicant from undertaking other regulated services, or commercial activities, unless these arise out of its investment activities or are incidental to those.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing (continued)

### AU-5.1.9

All documentation provided to the CBB as part of an application for a license must be in either the Arabic or English languages. Any documentation in a language other than English or Arabic must be accompanied by a certified English or Arabic translation thereof.

#### *Application Form and Documents (continued)*

### AU-5.1.10

Any material changes or proposed changes to the information provided to the CBB in support of an authorisation application that occurs prior to authorisation must be reported to the CBB.

AU-5.1.11 Failure to inform the CBB of the changes specified in Rule AU-5.1.10 is likely to be viewed as a failure to provide full and open disclosure of information, and thus a failure to meet licensing condition Rule AU-2.8.2.

#### *Licensing Process and Timelines*

AU-5.1.12 By law, the 60 day time limit referred to in Paragraph AU-5.1.2 only applies once the application is complete and all required information (which may include any clarifications requested by the CBB) and documents have been provided. This means that all the items specified in Rule AU-5.1.5 have to be provided, before the CBB may issue a license.

AU-5.1.12A The CBB recognises, however, that applicants may find it difficult to secure suitable senior management (refer AU-5.1.5(b) above) in the absence of preliminary assurances regarding the likelihood of obtaining a license.

AU-5.1.12B Therefore, applicants may first submit an unsigned Form 1 in draft, together with as many as possible of the items specified in Rule AU-5.1.5. This draft application should contain at least items AU-5.1.5(a); AU-5.1.5(b), with respect to proposed Directors (but not necessarily senior management); AU-5.1.5(c); AU-5.1.5(d); and AU-5.1.5(g) to AU-5.1.5(m) inclusive.

AU-5.1.12C On the basis of the information specified in Paragraph AU-5.1.12B, the CBB may provide an initial 'in principle' confirmation that the applicant appears likely to meet the CBB's licensing requirements, subject to the remaining information and documents being assessed as satisfactory. The 'in principle' confirmation will also list all outstanding documents required before an application can be considered complete and subject to formal consideration.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing (continued)

AU-5.1.12D An ‘in principle’ confirmation does not constitute a license approval, nor does it commit the CBB to issuing a license. However, it provides sufficient assurance for an applicant to complete certain practical steps, such as securing suitable executive staff that satisfy CBB’s ‘fit and proper’ requirements. Once this has been done, the applicant may finalise its application, by submitting the remaining documents required under Rule AU-5.1.1 and, once assessed as complete by the CBB, a signed and dated final version of Form 1. However, a Bahraini company proposing to undertake financial services activities would not be eligible to obtain a Commercial Registration from the Ministry of Industry and Commerce unless it receives the final approval from the CBB.

### *Licensing Process and Timelines (continued)*

AU-5.1.12E Regardless of whether an applicant submits a draft application or not, all potential applicants are strongly encouraged to contact the CBB at an early stage to discuss their plans, for guidance on the CBB’s license categories and associated requirements. The Licensing & Policy Directorate would normally expect to hold at least one pre-application meeting with an applicant, prior to receiving an application (either in draft or in final).

AU-5.1.12F Potential applicants should initiate pre-application meetings in writing, setting out a short summary of their proposed business and any issues or questions that they may have already identified, once they have a clear business proposition in mind and have undertaken their preliminary research. The Central Bank can then guide the applicant on the specific areas in the Rulebook that will apply to them and the relevant requirements that they must address in their application.

**AU-5.1.12G** At no point should an applicant hold themselves out as having been licensed by the CBB, prior to receiving formal written notification of the fact in accordance with Rule AU-5.1.12H below. Failure to do so may constitute grounds for refusing an application and result in a contravention of Articles 40 and 41 of the CBB Law (which carries a maximum penalty of BD 1 million).

### *Granting or Refusal of License*

**AU-5.1.12H** To be granted a license, an applicant must demonstrate compliance with the applicable requirements of the CBB Law and this Module. Should a license be granted, the CBB will notify the applicant in writing of the fact; the CBB will also publish its decision to grant a license in the Official Gazette and in two local newspapers (one published in Arabic, the other in English). The license may be subject to such terms and conditions as the CBB deems necessary for the additional conditions being met.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.1 Licensing (continued)

### AU-5.1.12I

The CBB may refuse to grant a license if in its opinion:

- (a) The requirements of the CBB Law or this Module are not met;
- (b) False or misleading information has been provided to the CBB, or information which should have been provided to the CBB has not been so provided; or
- (c) The CBB believes it necessary in order to safeguard the interests of potential customers.

### *Granting or Refusal of License (continued)*

### AU-5.1.12J

Where the CBB proposes to refuse an application for a license, it must give the applicant written notice to that effect. Applicants will be given a minimum of 30 calendar days from the date of the written notice to appeal the decision, as per the appeal procedures specified in the notice; these procedures will comply with the provisions contained in Article 46 of the CBB Law.

### AU-5.1.12K

Before the final approval is granted to a licensee, confirmation from a retail bank addressed to the CBB that the licensee's capital (injected funds) – as specified in the business plan submitted under Rule AU-5.1.5) – has been paid in must be provided to the CBB.



MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

## AU-5.1 Licensing (continued)

### *Starting Operations*

#### AU-5.1.13

Within 6 months of the license being issued, the new licensee must provide to the CBB (if not previously submitted):

- (a) The registered office address and details of premises to be used to carry out the business of the proposed licensee;
- (b) The address in the Kingdom of Bahrain where full business records will be kept;
- (c) The licensee's contact details including telephone and fax number, e-mail address and website;
- (d) A copy of its business continuity plan;
- (e) A description of the IT system that will be used, including details of how IT systems and other records will be backed up;
- (f) A copy of the auditor's acceptance to act as auditor for the applicant;
- (g) [Sub paragraph deleted July 2010];
- (h) A copy of the licensee's professional indemnity insurance policy or confirmation that a deposit to an amount specified by the CBB has been placed in escrow in an account at a bank licensed in the Kingdom of Bahrain (see Section GR-9.1);
- (i) A copy of the applicant's notarized memorandum and articles of association, addressing the matters described in Paragraph AU-5.1.8;
- (j) A copy of the Ministry of Industry and Commerce commercial registration certificate in Arabic and in English;
- (k) An updated organisation chart showing the reporting lines, committees (if any) and including the names of the persons undertaking the controlled functions;
- (l) A copy of the licensee's business card and any written communication (including stationery, website, e-mail, business documentation, etc.) including a statement that the investment firm is licensed by the CBB; and
- (m) Any other information as may be specified by the CBB.

#### AU-5.1.14

New licensees must start their operations within 6 months of being granted a license by the CBB, failing which the CBB may cancel the license, as per the powers and procedures set out in Article 48 of the CBB Law.

AU-5.1.15 The procedures for amending or cancelling licenses are contained in Sections AU-5.4 and AU-5.5 respectively.



MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

## AU-5.2 Approved Persons

### *Prior Approval Requirements and Process*

#### AU-5.2.1

Investment firm licensees must obtain CBB's prior written approval before a person is formally appointed to a controlled function. The request for CBB approval must be made by submitting to the CBB a duly completed Form 3 (Application for Approved Person status) and Curriculum Vitae after verifying that all the information contained in the Form 3, including previous experience, is accurate. Form 3 is available under Volume 4 Part B Authorisation Forms of the CBB Rulebook.

#### AU-5.2.2

When the request for approved person status forms part of a license application, the Form 3 must be marked for the attention of the Director, Licensing and Policy Directorate. When the submission to undertake a controlled function is in relation to an existing investment firm licensee, the Form 3, except if dealing with a MLRO, must be marked for the attention of the Director, Financial Institutions Supervision Directorate. In the case of the MLRO, Form 3 should be marked for the attention of the Director, Compliance Directorate.

#### AU-5.2.3

When submitting Form 3, investment firm licensees must ensure that the Form 3 is:

- (a) Submitted to the CBB with a covering letter signed by an authorised representative of the investment firm licensee, seeking approval for the proposed controlled function;
- (b) Submitted in original form;
- (c) Submitted with a certified copy of the applicant's passport, original or certified copies of educational and professional qualification certificates (and translation if not in Arabic or English) and the Curriculum Vitae; and
- (d) Signed by an authorised representative of the licensee and all pages stamped with the licensee's seal.
- (e) Submitted with the existing organisation chart or a proposed organisation chart (if the existing organisation chart is to be amended) reflecting the reporting line of the applicant. This is for all controlled functions listed in Rule AU-1.2.2 except a & e.

#### AU-5.2.3A

Investment firm licensees seeking to appoint Board Directors must seek CBB approval for all the candidates to be put forward for election/approval at a shareholders' meeting, in advance of the agenda being issued to shareholders. CBB approval of the candidates does not in any way limit shareholders' rights to refuse those put forward for election/approval.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.2 Approved Persons (continued)

AU-5.2.4 For existing licensees applying for the appointment of a Director or the Chief Executive/General Manager, the authorised representative should be the Chairman of the Board or a Director signing on behalf of the Board. For all other controlled functions, the authorised representative should be the Chief Executive/General Manager.

AU-5.2.5 [This Paragraph was deleted in July 2015.]

AU-5.2.6 [This Paragraph was moved to Paragraph AU-5.2.3A in July 2015.]

### *Assessment of Application*

AU-5.2.6A The CBB shall review and assess the application for approved person status to ensure that it satisfies all the conditions required in Paragraph AU-3.1.3 and the criteria outlined in Paragraph AU-3.1.5.

AU-5.2.6B For purposes of Paragraph AU-5.2.6A, investment firm licensees should give the CBB a reasonable amount of notice in order for an application to be reviewed. The CBB shall respond within 15 business days from the date of meeting all regulatory requirements, including but not limited to receiving the application complete with all the required information and documents, as well as verifying references.

AU-5.2.6C The CBB reserves the right to refuse an application for approved person status if it does not satisfy the conditions provided for in Paragraph AU-3.1.3 and does not satisfy the CBB criteria in Paragraph AU-3.1.5. A notice of such refusal is issued by registered mail to the licensee concerned, setting out the basis for the decision.

AU-5.2.7 [This Paragraph was deleted in January 2016.]

### *Appeal Process*

AU-5.2.7A Investment firm licensees or the nominated approved persons may, within 30 calendar days of the notification, appeal against the CBB's decision to refuse the application for approved person status. The CBB shall decide on the appeal and notify the investment firm licensee of its decision within 30 calendar days from submitting the appeal.

AU-5.2.7B Where notification of the CBB's decision to grant a person approved person status is not issued within 15 business days from the date of meeting all regulatory requirements, including but not limited to, receiving the application complete with all the required information and documents, investment firm licensees or the nominated approved persons may appeal to the Executive Director, Financial Institutions Supervision of the CBB provided that the appeal is justified with supporting documents. The CBB shall decide on the appeal and notify the investment firm licensee of its decision within 30 calendar days from the date of submitting the appeal.



MODULE	AU: Authorisation
CHAPTER	AU-5: Information Requirements and Processes

## AU-5.2 Approved Persons (continued)

### *Notification Requirements and Process*

#### AU-5.2.8

Investment firm licensees must immediately notify the CBB when an approved person ceases to hold a controlled function together with an explanation as to the reasons why (see Paragraph AU-5.5.5). In such cases, their approved person status is automatically withdrawn by the CBB.

#### AU-5.2.9

Investment firm licensees must immediately notify the CBB in case of any material change to the information provided in a Form 3 submitted for an approved person.

#### AU-5.2.10

Investment firm licensees must immediately notify the CBB when they become aware of any of the events listed in Paragraph EN-8.2.3, affecting one of their approved persons.





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**AU-5.3 [This Section deleted 07/2007]**



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## AU-5.4 Amendment of Authorisation

### *Licenses*

**AU-5.4.1** Investment firm licensees wishing to vary the scope of their license must obtain the CBB's written approval, before effecting any such change. Approval must be sought whenever a licensee wishes to add or cease undertaking a regulated investment service, or to vary a condition imposed on their license.

AU-5.4.2 Failure to secure the CBB approval prior to effecting such changes is likely to be viewed as a serious breach of a licensee's regulatory obligations, and may constitute a breach of Article 40(a), as well as Article 50(a), of the CBB Law.

**AU-5.4.3** In addition to any other information requested by the CBB, and unless otherwise directed by the CBB, an investment firm licensee requesting CBB approval to undertake a new regulated investment service must provide the following documentation:

- (a) A summary of the rationale for undertaking the proposed new service;
- (b) A description of how the new service will be managed and controlled; and
- (c) An analysis of the financial impact of the new service.

AU-5.4.4 The CBB will only agree to amend a license if doing so poses, in its judgement, no unacceptable risks to customers. As provided for under Article 48 of the CBB Law, the CBB may itself move to amend a license, for instance if a licensee fails to satisfy any of its existing license conditions or protecting the legitimate interests of customers or creditors of the licensee requires such a change. See also Chapter EN-7, regarding the cancellation or amendment of licenses, including the procedures used in such instances.

### *Approved Persons*

**AU-5.4.5** Investment firm licensees must seek prior CBB approval before an approved person may move from one controlled function to another within the same licensee.

AU-5.4.6 In such instances, a new Form 3 (Application for Approved Person status) should be completed and submitted to the CBB. Note that a person may be considered 'fit and proper' for one controlled function, but not for another, if for instance the new role requires a different set of skills and experience. Where an approved person is moving to a controlled function in another licensee, the first licensee should notify the CBB of that person's departure (see Rule AU-5.5.5), and the new licensee should submit a request for approval under Rule AU-1.2.1.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.5 Cancellation of Authorisation

### *Voluntary Surrender of a License or Closure of a Branch*

**AU-5.5.1** In accordance with Article 50 of the CBB Law, investment firm licensees wishing to cancel their license or cease activities for a branch must obtain the CBB's written approval, before ceasing their activities. All such requests must be made in writing to the Director, Financial Institutions Supervision, setting out in full the reasons for the request and how the business is to be wound up.

**AU-5.5.2** Investment firm licensees must satisfy the CBB that their customers' interests are to be safeguarded during and after the proposed cancellation. The requirements contained in Module GR regarding cessation of business must be satisfied.

AU-5.5.3 Failure to comply with Rule AU-5.5.1 constitutes a breach of Article 50(a) of the CBB Law. The CBB will only approve such a request where it has no outstanding regulatory concerns and any relevant customer interests would not be prejudiced. A voluntary surrender of a license will not be accepted where it is aimed at preempting supervisory actions by the CBB. A voluntary surrender will only be allowed to take effect once the licensee, in the opinion of the CBB, has discharged all its regulatory responsibilities to customers.

### *Cancellation of a License by the CBB*

AU-5.5.4 As provided for under Article 48 (c) of the CBB Law, the CBB may itself move to cancel a license, for instance if a licensee fails to satisfy any of its existing license conditions or protecting the legitimate interests of customers or creditors of the licensee requires a cancellation. The CBB generally views the cancellation of a license as appropriate only in the most serious of circumstances, and generally tries to address supervisory concerns through other means beforehand. See also Chapter EN-7, regarding the cancellation or amendment of licenses, including the procedures used in such instances and the licensee's right to appeal the formal notice of cancellation issued by the CBB.

AU-5.5.4A Cancellation of a license requires the CBB to issue a formal notice of cancellation to the licensee concerned. The notice of cancellation describes the CBB's rationale for the proposed cancellation, as specified in Article 48(d) of the CBB Law.

AU-5.5.4B Where the cancellation of a license has been confirmed by the CBB, the CBB will only effect the cancellation once a licensee has discharged all its regulatory responsibilities to clients. Until such time, the CBB will retain all its regulatory powers towards the licensee and will direct the licensee so that no new regulated investment services may be undertaken whilst the licensee discharges its obligations to its clients.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

## AU-5.5 Cancellation of Authorisation(continued)

### *Cancellation of Approved Person Status*

**AU-5.5.5** In accordance with Paragraph AU-5.2.8, investment firm licensees must promptly notify the CBB in writing as soon as they become aware, when a person undertaking a controlled function will no longer be carrying out that function. If a controlled function falls vacant, the investment firm licensee must appoint a permanent replacement (after obtaining CBB approval), within 120 calendar days of the vacancy occurring. Pending the appointment of a permanent replacement, the investment firm licensee must make immediate interim arrangements to ensure continuity of the duties and responsibilities of the controlled function affected, provided that such arrangements do not pose a conflict of duties. These interim arrangements must be approved by the CBB.

AU-5.5.6 The explanation given for any such changes should simply identify if the planned move was prompted by any concerns over the person concerned, or is due to a routine staff change, retirement or similar reason.

AU-5.5.7 The CBB may also move to declare someone as not 'fit and proper', in response to significant compliance failures or other improper behaviour by that person: see Chapter EN-8 regarding the cancellation of 'fit and proper' approval.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-5: Information Requirements and Processes</b>

**AU-5.6 Publication of the Decision to Grant, Cancel or Amend a License**

**AU-5.6.1** In accordance with Articles 47 and 49 of the CBB Law, the CBB must publish its decision to grant, cancel or amend a license in the Official Gazette and in two local newspapers, one in Arabic and the other in English.

**AU-5.6.2** For the purposes of Paragraph AU-5.6.1, the cost of publication must be borne by the Licensee.

**AU-5.6.3** The CBB may also publish its decision on such cancellation or amendment using any other means it considers appropriate, including electronic means.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-6: License Fees</b>

## AU-6.1 License Application Fees

### AU-6.1.1

Applicants seeking an investment firm license from the CBB must pay a non-refundable license application fee of BD 100 at the time of submitting their formal application to the CBB.

AU-6.1.2 There are no application fees for those seeking approved person status.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-6: License Fees</b>

## AU-6.2 Annual License Fees

**AU-6.2.1** Investment firm licensees must pay the relevant annual license fee to the CBB, on the 1<sup>st</sup> of December of the preceding year for which the fees are due.

AU-6.2.2 The relevant fees are specified in Rules AU-6.2.3 to AU-6.2.5 below: different fees are specified for Category 1, Category 2 and Category 3 investment firms. The fees due on 1<sup>st</sup> December are those due for the following calendar year, and are calculated on the basis of the firm's latest audited financial statements for the previous calendar year: i.e. the fee payable on 1<sup>st</sup> December 2013 for the 2014 year (for example) is calculated using the audited financial statements for 2012, assuming a 31<sup>st</sup> December year end. Where a licensee does not operate its accounts on a calendar-year basis, then the most recent audited financial statements available are used instead.

**AU-6.2.3** Category 1 investment firms must pay a variable annual licensing fee based on 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 6,000 and a maximum ('cap') of BD 24,000.

**AU-6.2.4** Category 2 investment firms must pay a variable annual licensing fee based on 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 4,000 and a maximum ('cap') of BD 12,000.

**AU-6.2.5** Category 3 investment firms must pay a variable annual licensing fee based on 0.25% of their relevant operating expenses, subject to a minimum ('floor') of BD 1,000 and a maximum ('cap') of BD 4,000.

**AU-6.2.6** Relevant operating expenses are defined as the total operating expenses of the licensee concerned, as recorded in the most recent audited financial statements available, subject to the adjustments specified in Rule AU-6.2.7.

**AU-6.2.7** The adjustments to be made to relevant operating expenses are the exclusion of the following items from total operating expenses:

- (a) Training costs;
- (b) Charitable donations;
- (c) CBB fees paid; and
- (d) Non-executive Directors' remuneration.

AU-6.2.8 For the avoidance of doubt, operating expenses for the purposes of this Section, do not include items such as depreciation, provisions, interest expense, and dividends.

AU-6.2.9 The CBB would normally rely on the audited accounts of a licensee as representing a true and fair picture of its operating expenses. However, the CBB reserves the right to enquire about the accounting treatment of expenses, and/or policies on intra-group charging, if it believes that these are being used artificially to reduce a license fee.



<b>MODULE</b>	<b>AU: Authorisation</b>
<b>CHAPTER</b>	<b>AU-6: License Fees</b>

## AU-6.2 Annual License Fees (continued)

**AU-6.2.9A** Investment firm licensees must pay a fixed annual fee of BD 1,000 for each locally incorporated SPV in Bahrain which is under the control of and/or providing an actual business function, service or activity (whether actively or passively) for the licensee and/or others at the licensee's direction or having been established under the licensee's direction for that purpose.

AU-6.2.9B The annual fee for SPVs stipulated in Paragraph AU-6.2.9A does not apply to SPVs of Bahrain domiciled CIUs. In the case of Bahrain domiciled CIUs, investment firm licensees should refer to the relevant Chapter in Module ARR of Volume 7, depending on the classification of the Bahrain domiciled CIU.

**AU-6.2.10** Investment firm licensees must complete and submit Form ALF (Annual License Fee) to the CBB, no later than 15<sup>th</sup> October of the preceding year for which the fees are due.

**AU-6.2.10A** All licensees are subject to direct debit for the payment of the annual fee and must complete and submit to the CBB a Direct Debit Authorisation Form by 15<sup>th</sup> September available under Part B of Volume 4 (Investment Business) CBB Rulebook on the CBB Website.

**AU-6.2.11** For new licensees, their first annual license fee is payable when their license is issued by the CBB. The amount payable is the floor amount specified for their category of license.

AU-6.2.12 For the first full year of operation for investment firm licensees, the licensee would calculate its fee as the floor amount. For future years, the licensee would submit a Form ALF by 15<sup>th</sup> October of the preceding year for which the fees are due and calculate its fee using its last audited financial statements (or alternative arrangements as agreed with CBB, should its first set of accounts cover an 18-month period).

AU-6.2.13 Where a license is cancelled (whether at the initiative of the firm or the CBB), no refund is paid for any months remaining in the calendar year in question.

AU-6.2.14 Investment firm licensees failing to comply with this Section may be subject to financial penalties for date sensitive requirements as outlined in Section EN-5.3A or may have their licenses withdrawn by the CBB.