BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

ON

PROPOSED ENHANCEMENTS TO ENFORCEMENT POWERS OF THE AUTHORITY

October 2010

INTRODUCTION

In January 2009 the Bermuda Monetary Authority published a Discussion Paper entitled "Proposed Enhancements to Insurance Supervision and Enforcement Powers". The Paper identified a number of additional powers which could enhance the capacity of the Authority to effectively regulate the insurance industry, to ensure the Authority meets appropriate international standards.

The objective of the Discussion Paper was to enable external stakeholders to gain an insight into our initial thoughts and comment at an early stage to allow the Authority to evaluate the proposals. While there was limited response from stakeholders, that response was generally supportive of the proposals for additional powers.

In the preamble to the Discussion Paper it was stated "Subject to the progress of this discussion paper a similar paper on enforcement relating to Banking, Trust and Investment issues and including generic perimeter issues, is to be published in late 2009."

Since the time the Discussion Paper was issued there have been a number of significant events, not the least of which is the increasing specificity of requirements for equivalency under Europe's Solvency II Directive and the growing requirement for regulators to have an extensive range of powers available to enable them to exercise effective oversight and supervision of the financial services industry.

In view of the changing expectations on regulators the Authority has decided that it is appropriate that most of the powers identified within the Discussion Paper should be applied across the whole of the regulated financial sector in Bermuda. This has a number of benefits particularly that it ensures there are a uniform set of powers available to the Authority across its entire regulatory role, rather than the current approach, which has resulted in different powers being available under different Acts. Thus, it is now intended that the proposed powers would be added to the following legislation:

- The Insurance Act 1978
- The Banks and Deposit Companies Act 1999
- The Investment Business Act 2003
- The Trusts (Regulation of Trust Business) Act 2001
- The Investment Funds Act 2006
- Money Service Business Regulations 2007

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The purpose of this Consultation Paper is to inform the regulated financial sector specifically, and the community at large, of the proposals for additional powers and to invite comment on their suitability for inclusion in the Bermudian financial regulatory legislation.

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This paper outlines the Authority's proposals for additional enforcement powers over the financial services industry. The views of the financial services industry and other interested persons on the proposals set out in this paper are invited. Comments are welcome either by e-mail or in writing and should be sent to the Authority addressed to policy@bma.bm or to Tom Galloway Senior Legal Counsel at tgalloway@bma.bm not later than 15th November 2010.

1 EXECUTIVE SUMMARY

1. The Authority has a number of supervisory and enforcement powers which it may use in its regulation of the financial sector in Bermuda. Existing legislation provides for powers such as cancellation of licences, the removal of senior officers, directors and controllers in some circumstances and the imposition of directions to licensed entities. These powers are significant, however their nature tends to be broad rather than suitable for more targeted issues and they have typically been used infrequently and only when all other courses of action have failed. In many instances powers that have been incorporated in newer Acts, such as the Investment Business Act, have not been replicated in older legislation notwithstanding that such powers are suitable for use in regulation more broadly. Further there are in many instances a lack of more targeted powers for regulatory issues that are serious enough to warrant regulatory intervention but not so critical as to call for revocation or the use of the other significant existing sanctions referred to above.

Enforcement Powers Concerning Individuals

2. We have reviewed our enforcement powers concerning individuals who take up positions as directors, officers or controllers. Currently the Authority must approve the appointment of such individuals at the licensing stage, i.e. there is a power to "bar" a person who is considered not fit and proper for a specific position at the outset.

3. The Authority has powers to remove such individuals from individual Institutions after their appointment when certain specified events occur or where there are failures to meet the relevant minimum criteria. In the Discussion Paper we considered whether this power would be usefully supplemented by the power to require individuals in specified functions to register with the Authority or whether a power to ban individuals from acting in roles in the industry utilising the "fit and proper" standards identified in the minimum criteria, would be more appropriate.

4. The responses to the Discussion Paper were broadly in support of a "banning" process rather than a registration process.

Civil Fines

5. Whilst many regulators have the capacity to impose civil fines against institutions, individuals or both, the BMA does not have this power, other than under S20 of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008 which is limited to breaches of the anti-money laundering regulations. The process set out in that Act seems to represent a simple and effective regulatory tool and, following its introduction in the AML legislation, we have concluded that such a power is appropriate as an enforcement tool in the supervision of the financial sector generally.

Other Powers

6. We have identified a number of specific powers available in other jurisdictions and have described them in an abbreviated way. Each power seems to have merit, and affords the opportunity to use more focussed and targeted solutions to regulatory issues.

Publication of Enforcement Action

7. Publishing information about specific enforcement actions serves a number of purposes, particularly to ensure that:

- the public is fully informed of regulatory actions taken by the Authority,
- relevant clients/policyholders/depositors are informed about the conduct of their institutions; and
- the deterrent value of any enforcement action is maximised

2 CURRENT POSITION

8. Historically, formal enforcement of regulation has been based on criminal prosecution and the imposition of Court-based penalties. Other means of ensuring regulatory compliance, such as the use of Directions, are usually predicated on a criminal penalty for failure to comply. In a practical sense there are limitations on the utility of this form of enforcement, since a criminal prosecution is complex, takes significant time and involves the interaction of a number of different agencies. It also does not compel compliance with the original requirement, but simply penalises failures to comply.

9. The use of “moral suasion” to rectify deficiencies and resolve issues has been widely used in Bermuda because it is efficient and generally effective. Such arrangements have usually remained private between the Authority and the entity or individual. The size of the financial sector and the proximity of all parties have enabled the above arrangements to operate effectively in the past. There has been a high level of co-operation generally which has been beneficial to both regulator and regulated. It is not anticipated that the Authority will significantly change its regulatory approach, which will remain risk based and predicated on maintaining a close and co-operative working relationship with regulated institutions.

10. However, we now operate in a highly complex, inter-linked worldwide financial market where the boundary between the product types is increasingly blurred and international ownership and management of entities is increasing, with an attendant reduction in the levels of personal contact possible. This suggests that additional powers to address the changing nature of the Bermudian financial sector, and the changing financial environment generally may be appropriate.

11. Developments elsewhere in corporate governance and regulation, and the recent heightened concerns about effective and transparent financial regulation internationally, all indicate that Bermuda needs to be able to demonstrate its commitment to effective regulation.

12. While Bermuda has a significant suite of regulatory powers already in force augmentation of our existing powers will serve to demonstrate our commitment to a range of regulatory powers commensurate with the size and complexity of our financial sector and equivalent to those available to regulators elsewhere.

3 POWERS AVAILABLE TO OTHER REGULATORS

In the Discussion Paper we described a "gap analysis" comparing Bermuda to other insurance jurisdictions.

13. We reviewed four areas in each domicile:

    a. If they could publicly disclose enforcement actions against companies or individuals;

    b. If they required the registration of individuals with key functions;

    c. If they could ban individuals from roles; and

    d. If they had a civil fining structure (they all had a criminal fining structure).

Jurisdiction	Public Disclosure	Registering Individuals	Civil Fines	Banning Individuals
Bermuda	No	No	No	Barring not banning
New York**	Yes	No	Yes	Yes
Australia	Yes	No	Yes	Yes
UK	Yes	Yes	Yes	Yes
Switzerland	Yes	No	No (could confiscate profits)	Yes (within limits)
Ireland	Yes	Yes	Yes	Yes
Singapore	Yes	Yes	Yes	Yes
Guernsey	Yes	Yes	No*	Yes
Cayman	Yes	No	No*	Yes
Vermont	Yes	No	No	Yes

* Financial penalties possible for late filing

** New York State Insurance Department

14. In the above table:

   a. By “publicly disclose” we mean that the enforcement action may be made public under the jurisdiction’s procedures, usually by publication on the regulator’s website, in a press notice or press release.

   b. By “civil fine” we mean that the regulator, in its own right, can impose a financial penalty on an individual or company, or can sue, again in its own right, through the civil court system. It is noted that since the Discussion Paper the Authority has been given the power to impose civil fines and publicise its decisions in respect of the AML area.

   c. The comparisons are based on “closest fit” when an exact match of terminology is not possible.

The differences in regulatory powers in Bermuda ,when compared with other regulators supports the proposition that adding such powers to the regulatory options of the Authority would assist in any international comparison or evaluation

4 PROPOSED POWERS

15. Bermuda has a strong reputation for effective and discreet supervisory regulation of the financial sector. However, we believe it is an appropriate time in the development of the market to provide additional tools to enhance enforcement action, through financial sanctions, banning and other powers.

16. The Authority has reviewed the powers available to other regulators, particularly the Australian Prudential Regulation Authority in Australia (APRA), the Financial Services Authority in the United Kingdom (FSA), the Guernsey Financial Services Commission and the Singapore Monetary Authority.

17. The Authority has also considered the powers available to it under current legislation, particularly the Investment Business Act and the Proceeds of Crime Regulation (Supervision and Enforcement) Act and considered issues that have recently arisen in its regulatory activities generally. It should be emphasised that these powers are identified as appropriate to enhance the regulatory options available to the Authority. It is not argued that current conduct by industry participants has given rise to a direct need for these powers.

18. The Authority believes that the powers set out below provide strong deterrent value. If it has the capacity to publish, (see below), this would provide a visible and easily understood example of Bermuda's commitment to effective regulation. Such powers are consistent with a more transparent supervisory regime and they provide a wider range of tools to ensure effective focused supervision. These powers are more in line with the range of powers available to the other financial regulators we have examined and in some cases extend pre-existing powers already available to the Authority in limited circumstances.

19. Accordingly, the Authority has identified the following additional powers as suitable for inclusion in the various Acts:

5 Regulation of Individuals

There should be a general power to ban an individual from senior roles in the management of regulated Institutions in any one of the regulated sectors, based on a failure to meet acceptable standards of fitness and propriety. The power should provide for a set time period for banning and an ancillary power to admonish.

20. Certain individuals are required to be registered with the BMA, such as actuaries, insurance managers and agents. Auditors must be approved in some legislation. There is no express requirement for any approval for the appointment of directors, underwriters or other senior personnel. When considering whether to approve applications for registration by institutions the Authority does evaluate the fitness

and propriety of directors, other senior officers and known shareholders for the relevant position.

21. Under most of the regulatory Acts the BMA can serve a Notice of Objection to a "controller" of an institution where it appears to the Authority that the individual is no longer fit and proper to hold that position. The definition of "controller" includes a managing director and a chief executive of the institution, as well as persons who hold various percentages of shares in the institution in excess of 10%. It is an offence to continue as a controller after service of the Notice. There is also a provision which permits the BMA to apply to the Court for Orders compelling the sale of shares held by a shareholder-controller, once an Objection has been made.

22. Under most of the Acts the BMA can also issue a number of specified directions to an institution if certain pre-conditions exist. Those pre-conditions include:

    a. If there is a significant risk that the institution may become insolvent due to the way the business is being conducted.

    b. The institution being in breach of the Act or a condition imposed on it.

    c. The minimum criteria for licensing not being fulfilled or a person has become, or remained, a controller after a Notice of Objection has been served.

23. Amongst the specified directions that can be given in most Acts is a power to direct that a controller or officer be removed. An Officer is defined to include a director, a secretary, chief executive or senior executive (which in turn is defined as a person who exercises managerial functions or is responsible for maintaining accounts or other records).

24. It can be seen that the BMA has some powers to remove certain individuals from the management of a financial institution on the basis of their fitness and propriety and also a power to remove a wider class of persons if certain, specific pre-conditions have been met.

25. The current powers, set out above, relate to exclusion from the activities of a specific institution. There seems to be no logical reason to limit the "ban" to a specific entity. If an individual is unfit to hold a senior position in one insurer, for example, then it cannot be argued that that he is fit to hold similar positions with any other insurer. The practice in most other jurisdictions is to exclude an individual from the industry in question, rather than only the specific institution where he or she was employed.

26. In the Discussion Paper there was a discussion about whether there should be a licensing regime, similar to that which applies in the United Kingdom, or a banning power. The preferred view of the Authority is that a banning power is appropriate. That view had support amongst the respondents to the Discussion paper.

27. In the Authority's view any banning process should be based on conduct which demonstrates the individual is not fit or proper to hold a senior role. To some extent, triggers for the use of the power can be identified. In Bermuda Minimum Criteria have defined "fitness and propriety" in various Acts to some extent. It is not, however, possible to exhaustively list the conduct which may trigger the use of such a power.

28. The preferred methodology is an internal process, similar to that provided for in most regulatory Acts for the issue of Directions. If the Authority formed the view that the conduct of an individual raised questions as to his fitness and propriety, a form of Notice would be issued, advising of the preliminary view, enclosing the material on which that view has been reached, and inviting a response. The Notice, material and response would be submitted for review and to make a decision whether to prohibit the individual from senior roles generally in the relevant industry. There would also be an appeal process to an external tribunal. The Discussion Paper recommended that the power provide for the imposition for bans for specified periods of time. That proposal received significant support from respondents to the Paper. It is intended, therefore that the power would include a provision for the Authority to specify the period during which the ban would apply, or conditions to be met before a ban could be removed.

29. There will be circumstances where conduct is unacceptable but not sufficiently grievous to warrant banning. It is currently intended that, as an adjunct to a banning power, there be a power to formally admonish an individual.

30. Any power to ban or admonish an individual would have to carry with it the capacity to publish the decision to impose the ban or issue the admonition and would involve the same process as outlined below. It is envisaged that in this instance there would be a public register showing the names, of all individuals banned and any relevant details.

6 Civil Fines

There should be a power to impose a civil fine for breaches of specified regulatory obligations.

31. The power to impose a financial penalty by way of a civil fine on an institution for a failure to comply with its regulatory obligations is a primary enforcement tool in those jurisdictions where the power exists. It is understood to have proven an extremely effective power. The power has a number of attractive characteristics, from a regulatory standpoint:

    a. Firstly, it enables a timely response to a failure in compliance. The often time-consuming processes inherent in the preparation and litigation of a public criminal prosecution are avoided and in lieu a fairly straightforward administrative process is substituted. Thus, the time between the breach and the imposition of the penalty can be significantly shortened. This is

attractive for a number of reasons, including regulatory and cost efficiency. It also has significant and immediate deterrence benefits.

b. Secondly, it has the capacity to be more directly tailored to both the size of the entity in question and the relative importance of the provision which was breached. The Authority would have an intermediate and risk-based enforcement tool short of the more severe and final powers such as revocation of an insurer's licence, which may be inappropriate to the resolution of the issue. Other tools, such as the imposition of conditions on a licence, are often inappropriate in circumstances where there has been a breach of obligations, with no long-term implications.

c. The benefits of a power of this nature, if coupled with a power to publish the findings (see below), has the significant merit of indicating to the regulated community, and the public at large, the Authority's views both as to the obligations of the institution and the gravity which the Authority attaches to specific breaches of those obligations. In addition, recognition can be given to ameliorating factors such as "self-reporting", co-operation and immediate rectification. It is a tool capable of being fairly closely calibrated to the full circumstances of the breach.

32. The Authority was given a power to impose financial penalties in the AML/ATF area in 2009 and the relative merits of an administrative power of this kind were exhaustively debated during that process. Recently the power to levy financial penalties in AML/ATF matters was extended, without significant opposition, to other regulators in this area. While the power has only been used once at the time of publication it has proven to be an effective regulatory tool.

33. It is envisaged that any similar power imposed under the other regulatory Acts would contain the same provisions and processes as that developed in the AML/CTF area. Thus, there would be a preliminary Notice process, an opportunity to make submissions before a decision was made and there would be a right of appeal to an external tribunal before the penalty was imposed.

34. It is currently proposed that the maximum size of any penalties be at a similar level to that of the AML/CTF legislation, that is, $500,000 for each failure. The individual regulatory Acts would specify what breaches would warrant the imposition of such a penalty and, where appropriate, specify limits to the penalty depending on the nature of the breach. Thus, a breach of a filing obligation could attract a maximum specified penalty of, for example, $1,000 on a first occasion and an escalating range for second and subsequent breaches. A failure to comply with a Direction may however have a maximum penalty much closer to the maximum. . It should be appreciated that, while the maximum penalty may be quite high, the obligation for the penalty to be effective, proportionate and dissuasive, as is required in the AML legislation will limit the actual size of most penalties significantly.

The power would extend to the following kind of conduct:

a. Failure to comply with a Licence condition
b. Failure to comply with a Direction
c. Failure to file financial and other reports, within time limits, see section 8 below
d. Failure to comply with specified legislative obligations, including minimum criteria

7 Publication of Regulatory Actions

There should be a power to publicise specified regulatory actions taken by the Authority.

35. Publicising enforcement and other regulatory activity is widely recognised as an effective tool for a regulator. It demonstrates to the financial industry the jurisdiction and the world at large, the regulator's activities and commitment to ensuring effective compliance with its policies. It also serves as a significant deterrent to regulated entities when non-compliance with the legislation could occur. To date the secrecy provisions which bind the Authority, such as S31 of the Bermuda Monetary Authority Act, prevent the BMA from publishing its use of Enforcement powers.

36. It is noted that S21 of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008, dealing with AML compliance, has a provision giving the Authority the power, but not the obligation, to publish details of any financial penalty imposed under that Act. This provision requires the Authority to notify the institution before any decision to publish and prevents the Authority from publishing the decision to impose a penalty until all appeal processes have been exhausted. That power has now been extended to the other agencies with a regulatory role in AML/CTF.

37. It is also noted that Sections 53 to 60 of the Investment Business Act (IBA) set out a legislative scheme enabling the Authority to "name and shame" an entity that is in breach, without imposing additional sanctions against the entity. The power enables the Authority to name the entity and state the breach that has been committed. This power is not felt to be an effective alternative to publicising enforcement actions as it is not designed for, or suitable for, that purpose.

38. Many Bermuda companies already "self-disclose" because of the listing rules on various exchanges, the requirements of Securities Exchange Commission or similar regulators for filings and due to accountancy requirements.

39. The Discussion Paper discussed this issue as a matter requiring a policy statement from the Authority and responses to the Paper were mixed on this topic. A number

of respondents acknowledged the appropriateness of some form of publicity but were concerned because of a lack of specificity around the proposal.

40. Since the time of the Discussion Paper, the processes underlying the AML power to publicise have been the subject of much consideration. Guidance and a Statement of Principles have been developed, and the process for complying with the publicity provisions identified. While there is not extensive experience in the process yet, it would seem relatively straightforward. The requirement that any appeal be exhausted before publication seems to meet concerns about fairness as does the discretionary nature of the process. The simplicity of the process generally has much to recommend it, and it has the ability to be tailored to fit the circumstances of the matter. Thus, for example, it may be decided that the imposition of a penalty for a breach of a licence condition may be appropriate but publicity of an imposition of a Direction may not be justified.

41. The Authority proposes that the power currently in the Proceeds of Crime Regulations (Supervision and Enforcement) Act be replicated in each of the other Acts, enabling specified enforcement actions to be the subject of a public statement by the Authority.

42. This process would align us with comparable jurisdictions and would assist in ensuring Bermuda's regulatory framework is recognised as equivalent by other key jurisdictions and that our regulatory activities are visible to all.

8 Penalty powers for failure to meet filing obligations

There should be a power to impose a financial penalty on regulated Institutions which fail to lodge required documentation

43. Most similar jurisdictions have provisions requiring the filing of various returns and notifications within prescribed times. Bermuda has such requirements in its regulatory Acts and generally, failure to meet the obligations does create a criminal offence. The Authority has never sought a prosecution for such an offence and the time involved in the preparation and conduct of such a prosecution, both by the Authority and other institutions, such as the Police Service and the Director of Public Prosecutions makes this form of sanction impractical. This significantly detracts from the effect of the provisions and may encourage entities to ignore filing requirements. It is suggested that a lack of effective sanctions for failure to lodge relevant returns, reports, certificates applications and notifications has the potential to severely impact on the Authority's knowledge of the entities it regulates, on the compliance of those entities with their obligations and the overall effectiveness of regulation.

44. One solution is to proceed with prosecutions for failure to comply with statutory requirements; however the criminal process is a lengthy and cumbersome method of dealing with what are, in most cases, minor breaches of obligation. In addition the

criminal process conducted in open court has the potential to attract public attention and runs the risk of causing disproportionate harm to the entity's reputation compared to the offence committed.

45. In the United Kingdom failure to lodge a return by the due date attracts a late payment fee of £250 as well as exposing the entity to possible further financial penalty. In Guernsey, the Financial Services Commission Law empowers the Commission to make regulations for the charging of administrative financial penalties for failure to pay fees and the late filing of documents and information required under the regulatory laws. In the Cayman Islands there appears to be a "ladder of compliance" process which can escalate to the imposition of a penalty.

46. The New York State Insurance Department has a penalty for almost every late submission due to the regulator, which is comprehensively outlined on their website.

47. In Australia, there is a specific Act, known as the Financial Sector (Collection of Data) Act which authorises APRA to impose penalties for failure to lodge returns and information as required. The process is similar to that followed for traffic fines, with prosecution as an alternative to payment.

48. If a "civil penalty" type power was introduced in each Act, as is proposed above, then a provision permitting that power to be used in relation to late returns of statutory information, with a specified penalty as per the power in the United Kingdom would seem an appropriate and simple process to ensure compliance with the relevant obligations.

49. The question of whether to publicise such penalties would be a discretionary matter for the BMA.

9 Injunctions to Restrain Conduct and Compel Compliance

There should be a general power, modelled on S63 of the Investment Business Act which enables the BMA to apply to a court for injunctions restraining institutions and individuals from specified activity or requiring certain things to be done.

50. The traditional method to compel compliance with the law is a provision which makes it a criminal offence to either do, or fail to do, something. There are a small number of such criminal offences in the Insurance Act, and the other regulatory Acts also contain some penal provisions. The deficiencies of the criminal process as an enforcement tool have been identified above. The capacity to take immediate action is especially important in the field of financial regulation where significant financial harm can be caused in a very short time.

51. Many jurisdictions around the world have resolved this issue by granting regulators a power to approach a Court seeking Court Orders which compel entities and

individuals to either do something to comply with legislative obligations or the regulators directions, or cease and desist with conduct which is in contravention of the law or proper conduct. These Orders can often be obtained within a very short time frame and on an interim basis pending a hearing. These Orders can, subject to the legislation, be used to compel regulated institutions to comply with proper practices, as well as to prohibit unauthorised or unlicensed bodies from carrying on regulated businesses or holding themselves out to be regulated or authorised. The Orders obtained can be quite wide in nature and can extend to Orders which freeze assets, provide information or refund monies to investors, for example.

52. The FSA has power under Sections 380 and 381 of the Financial Services and Markets Act 2000 to seek injunctions in the High Court. From the press releases on its website, it has used them both to restrain unauthorised activity and freeze assets. Section 27 of The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 contains a power to seek injunctions in respect of unauthorised businesses, as does the Banking Supervision Law of that Bailiwick.

53. The Investment Business Act 2003 contains a power, (Section 62), that permits the Authority to seek an injunction where there has been a contravention of a requirement under that Act. The court has the power to order that steps be taken to remedy the contravention. It is noted the court can also freeze assets and make restitution orders where there have been profits generated by the illicit conduct or losses caused to others.

54. In Australia, there are injunction powers in two regulatory Acts, the Superannuation Industry (Supervision) Act, under Section 315 and under Section 65A of the Banking Act. It is worth noting that the Banking Act provision extends to Orders prohibiting the use of specific words which are reserved in the Act for regulated entities.

10 Enforceable Undertakings

There should be a power to accept enforceable undertakings from institutions, capable of being enforced by Court Order.

55. These are a form of agreement where an entity, or an individual, undertakes to the regulator to do, or cease doing, some specified activity relating to the operation of a regulated institution. The undertaking is voluntary; however it is expressed to apply for a specified period. If it is not kept, the regulator has the power to apply to a Court for Orders that it be complied with. Subsequent failure to comply may be treated as a contempt of Court.

56. The use of these undertakings is common regulatory practice in Australia and a number of regulatory authorities have provisions in their legislation. Undertakings are used in many instances as a method of resolving regulatory concerns without the need for:

    a. more formal investigation or,

    b. conclusions averse to an entity.

    Often they amount to a settlement mechanism for resolving concerns or disputes and do not necessarily have to include an admission of impropriety on the part of the entity.

57. There is provision in UK legislation, such as Section 71 of the Enterprise Act 2002, granting the Office of Fair Trading a power to accept such undertakings. There appears no direct equivalent within the powers of the FSA, however Chapter 5 of its Decisions Procedures and Penalties Manual does discuss processes to reach settlement of enforcement action, which include an agreement.

58. It is felt that an administrative power of this kind may have significant use as a method of resolving issues with entities, without escalating them to an otherwise unnecessary level. It is also considered that this power would be a useful adjunct to other powers, such as the civil penalty power to ensure that breaches do not reoccur.

59. It is anticipated that the capacity to publish undertakings would be available to the Authority, however in practice it is likely that publication will be viewed as unnecessary due to the nature of specific undertakings.

General

60. It is apparent that each of the powers discussed represents an addition to the range of enforcement powers available to the Authority. In many cases the additions are felt necessary to bring Bermuda to a degree of direct equivalence with international

counterparts and in other cases as useful and more specific powers that can be targeted to resolve specific issues.

61. There are also obvious merits in having a uniform suite of powers available to the Authority across the entire regulated sector. This assists in ensuring a consistency of approach in enforcement matters and reduces the complexity which is a feature of current regulation.