



31 March 2020

NOTICE

Re: Fund Administration Provider Business Act 2019 Code of Practice and Statement of Principles

The Bermuda Monetary Authority (the Authority) is posting for consultation a Code of Practice (the Code) that will be issued pursuant to section 7 of the Fund Administration Provider Business Act 2019 (the Act). The Code will provide guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by persons carrying on fund administration provider business. Failure to comply with provisions set out in the Code will be a factor taken into account by the Authority in determining whether a licensed undertaking is conducting business in a prudent manner, as required by the minimum criteria for licensing.

The Authority is also posting for consultation a Statement of Principles (the Principles) that will be published under section 6 of the Act. Consistent with other supervisory Acts that govern financial service providers, the Principles will provide clarity on the manner in which the Authority proposes to act in –

- (a) Interpreting the minimum criteria for licensing specified in Schedule 1 to the Act and the grounds for revocation
- (b) Exercising its powers to take specified actions under the Act

Comments on the Code and the Principles should be received by the Authority on or before 14 May 2020.

Brief description of the Statement of Principles

The Authority proposes to issue a Statement of Principles in respect of the fund administration provider business sector. The content of the Principles is in keeping with comparable documents issued by the Authority in respect of other industry sectors. The Principles should be read in conjunction with the Code.

Brief description of the Code of Practice

The Code will supersede the Code of Conduct for Fund Administrators of 2008 (the 2008 Code). It will provide guidance as to the manner by which licensed undertakings are to carry on fund administration provider business. A brief description of certain key elements of the Code, including those where enhancements have been made relative to the 2008 Code, follows

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- (a) Under the Act, a “fund administrator” is defined as a person licensed to carry on “fund administration provider business”. The Code also adopts this definition
- (b) Paragraph 7 recognises that fund administration providers with higher risk profiles will require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner
- (c) Paragraph 14 requires that records held by fund administration providers must be transferred to the new provider as soon as possible (but no later than the date of termination of the previous fund administration provider’s services, unless agreed otherwise)
- (d) Paragraph 19 stipulates that each fund administration provider business must be conducted with integrity
- (e) Paragraphs 20 and 21 set out more comprehensive requirements on the disclosure of (confidential) information
- (f) In exercising their internal management controls, paragraph 22 through 27, among other things, require that fund administration providers review and assess the effectiveness of their internal control framework and review its appropriateness at least annually
- (g) Paragraphs 28 through 36 require fund administration providers to: (i) effect prompt and timely execution of clients’ requests, (ii) install competent and effective management, and (iii) ensure that their staff are adequately trained and competent to discharge their duties, and keep appropriate accounting and other records
- (h) Paragraph 37 requires that fund administration provider businesses (fund administration providers) have robust policies, procedures and controls in place to identify, assess and manage cybersecurity risks
- (i) Paragraphs 43 through 45 include requirements for outsourcing arrangements
- (j) The Authority’s expectation that an appropriate risk management framework be implemented for the benefit of a fund administration provider’s stakeholders is confirmed in paragraphs 46 and 47
- (k) Paragraph 48 records the Authority’s expectation that fund administration providers demonstrate a high level of responsibility when advertising their services
- (l) Paragraph 51 stipulates that fund administration providers are expected to deal openly and cooperatively with the Authority and any other relevant regulatory authorities
- (m) According to paragraph 52, fund administration providers must not frustrate the Authority’s ability to carry out its supervisory or regulatory obligations



BERMUDA MONETARY AUTHORITY

FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019

CODE OF PRACTICE FOR FUND ADMINISTRATION PROVIDERS

31 MARCH 2020

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	OBJECTIVE	3
III.	DEFINITIONS.....	3
IV.	PROPORTIONALITY PRINCIPLE	3
V.	APPLICATION	4
VI.	COMMUNICATION WITH FUND INVESTORS/SHAREHOLDERS	4
VII.	DEALING WITH NON-COMPLIANT FUNDS.....	5
VIII.	TRANSFERS OF ADMINISTRATION PROVIDER.....	5
IX.	CLIENT DUE DILIGENCE AND MONITORING.....	5
X.	INTEGRITY AND ETHICS.....	6
XI.	DISCLOSURE OF INFORMATION	6
XII.	INTERNAL MANAGEMENT CONTROLS	6
XIII.	OUTSOURCING	11
XIV.	RISK MANAGEMENT FRAMEWORK.....	11
XV.	ADVERTISING	11
XVI.	COOPERATION WITH REGULATORY AUTHORITIES	12

I. INTRODUCTION

1. The Code of Practice (the Code) is issued pursuant to section 7 of the Fund Administration Provider Business Act 2019 (the Act). Section 7 provides that the Bermuda Monetary Authority (the Authority) may issue codes of practice that offer guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by persons carrying on fund administration provider business. Failure to comply with provisions set out in the Code will be taken into account by the Authority in determining whether a licensed undertaking (fund administration provider) is meeting its obligation to conduct its business in a prudent manner.
2. The Code should be read in conjunction with the Statement of Principles published under section 6 of the Act and the Enforcement Guide (Statement of Principles and Guidance on the Exercise of Enforcement Powers).

II. OBJECTIVE

3. The objective of the Code is to provide guidance to fund administration providers as to -
 - (a) The standards required under the Act and other financial services legislation
 - (b) Best practice in the industry
4. The Code shall be interpreted in light of the above objective so as to best give effect thereto. The Act provides that every fund administration provider shall in the conduct of its business have regard to any code of practice issued by the Authority.
5. The Authority expects fund administration providers to comply with the letter and the spirit of the Code. Where the Authority has concerns about a fund administration provider's compliance with the Code, it will bring its concerns to the attention of the relevant fund administration provider and take account of the comments and representations of the fund administration provider as well as, where relevant, its willingness to make appropriate changes to its conduct or practice.

III. DEFINITIONS

6. The relevant definitions appearing in section 2 of the Act shall apply to the interpretation of the Code.

IV. PROPORTIONALITY PRINCIPLE

7. Fund administration providers have varying risk profiles arising from the nature, scale and complexity of their business. Fund administration providers with higher risk profiles require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.

8. The Authority will monitor each fund administration provider's compliance with the Code in a proportionate manner relative to its nature, scale and complexity. These elements will be considered collectively, rather than individually. For example, a fund administration provider could be relatively small in scale, but carry on extremely complex business and would, therefore, still be required to maintain a sophisticated risk management framework. In defining these elements:
 - (a) "Nature" includes the relationship between clients and the fund administration provider or characteristics of the service provided (e.g., a fund administration provider that holds a client's other assets versus one that does not, etc.)
 - (b) "Scale" includes size aspects such as volume of the business conducted or the size of the balance sheet in conjunction with materiality considerations (e.g., an assessment of the impact of a fund administration provider's failure)
 - (c) "Complexity" includes items such as organisational structure and product design
9. In assessing whether a fund administration provider's business conduct is prudent and sound, the Authority will have regard for both its prudential objectives and the appropriateness of each Code provision for the fund administration provider, taking into account that fund administration provider's nature, scale and complexity.
10. The proportionality principle discussed above is applicable to all sections of the Code.

V. APPLICATION

11. The Code applies to all holders of fund administration provider business licences issued pursuant to section 10 of the Act. The Code is of general application, and seeks to take account of the wide diversity of undertakings that may be licensed. Every undertaking licensed under the Act in Bermuda is expected to have regard to the Code as amended from time to time. The Code is not a statement of the law and in particular does not affect a licensed undertaking's obligations under the Act or common law. Failure on the part of a licensed undertaking to comply with the provisions of the Code is not of itself an offence but will be taken into account by the Authority in determining whether or not the business is being conducted in a prudent manner as required by paragraph 2 of Schedule 1 to the Act. Persistent failure by licensed undertakings to abide by the provisions of the Code is likely to result in formal action being taken by the Authority.

VI. COMMUNICATION WITH FUND INVESTORS/SHAREHOLDERS

12. Where communication with fund investors/shareholders forms part of the contracted services, a fund administration provider must have arrangements in place to ensure that such communication is timely and accurate, and carried out in a professional manner. A fund administration provider must also maintain arrangements for the prompt investigation and remediation of any errors and complaints that arise, including the maintenance of a record of customer complaints and their handling.

VII. DEALING WITH NON-COMPLIANT FUNDS

13. A fund administration provider must be alert for indications that a fund to which services are provided may no longer be operating in compliance with legal, offering document, or other stipulated requirements. In such circumstances, the fund administration provider needs to consider whether it is content to continue providing services to the fund. It must also determine whether it may have legal or contractual obligations to report any concerns.

VIII. TRANSFERS OF ADMINISTRATION PROVIDER

14. A fund administration provider must cooperate in ensuring a smooth and timely transfer of records or other relevant information when its role is transferred to a new fund administration provider. Such records, or other information, must be transferred to the new fund administration provider as soon as practicable, but no later than 30 days from the date of the termination of the previous fund administration provider's services, unless agreed otherwise.

IX. CLIENT DUE DILIGENCE AND MONITORING

15. Licensed undertakings must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new customer. At a minimum, licensed undertakings need to be able to comply with The Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering) Regulations 1998, the Anti-Terrorism (Financial and Other Measures) Act 2004, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Guidance Notes on the Prevention of Money Laundering, together with any other relevant legislation that may come into operation from time to time. To ensure compliance with these requirements, licensed undertakings should have adequate policies and procedures in place to ensure that they know the identity of each client. They must also verify the source of all assets introduced, to satisfy themselves that they are not of illicit origin.
16. Fund administration providers must ensure that they conduct adequate background checks before agreeing to provide services to a new fund client, in order to determine that they are properly familiar with the operator and any controllers, as well as with other service providers to the fund.
17. Where fund administration providers, as part of their functions, take on specific functions with regard to verifying underlying investors in respect of Anti-Money Laundering/Anti-Terrorist Financing, they need to ensure that they have a full understanding of the relevant legal or contractual obligations and other requirements. They should also develop and put in place appropriate internal written procedures, including with regard to training relevant staff and, at least annually, monitoring compliance with their internal arrangements. Particular attention should be paid to ensuring the effectiveness of the roles of the Compliance Officer and the Money Laundering Reporting Officer, under Bermuda's proceeds of crime legislation. As relevant, fund administration providers may also need to have appropriate regard to legal requirements in the jurisdiction of a particular fund and any differences from those applying in Bermuda.

18. A fund administration provider must ensure that each prospectus or other offering document provides adequate disclosure of the nature and scope of its functions to underlying investors and of its role in providing services to the different funds.

X. INTEGRITY AND ETHICS

19. The fund administration providers must conduct its business with integrity at all times, acting with due care, skill and diligence and should not attempt to avoid or contract out its responsibilities under the Code. It must deal fairly with all clients and seek to ensure that clients are not misled as to the service being provided and the duties and obligations of the fund administration provider.

XI. DISCLOSURE OF INFORMATION

20. Fund administration providers must maintain in place arrangements designed to protect the proper confidentiality of fund clients and of underlying investors. Any obligation to maintain the confidentiality of information communicated by clients must be adhered to by the fund administration provider (including its shareholders, directors, officers, senior executives, employees, outsourced partners, etc.). Notwithstanding the immediately preceding sentence, the fund administration provider may disclose confidential information where the fund administration provider is given relevant consent to disclose information, is required by applicable law to disclose information or provides information in accordance with the terms of the client's constitutional documents. Accordingly, persons who are engaged to provide services to the fund administration provider and have access to the confidential information of the fund administration provider's clients should, prior to commencement of the engagement, be advised in writing of their obligation to keep the information confidential. Further, the fund administration provider should provide periodic reminders thereafter of confidentiality issues.
21. To comply with its duty to uphold integrity and ethics, the fund administration provider's communication with clients and prospective clients must be clear and a fair representation. This includes communications relating to marketing and promotional material. The fund administration provider's public platform, or materials provided to prospective clients prior to entering into an arrangement, must include details of the board of directors or an equivalent governing body (the board), the chief executive and senior executive team, head office (and registered office, if different), a description of the complaints procedure and arrangements in case of business failure. The fund administration provider must disclose to clients any material business changes that affect clients.

XII. INTERNAL MANAGEMENT CONTROLS

22. The board of the fund administration provider must review and assess the effectiveness of its internal control framework and review its appropriateness at least annually. Any material deficiencies must be documented and resolution measures should be implemented in a timely manner.

23. The fund administration provider must ensure that it has effective systems and internal controls in place, together with persons with the relevant professional skills available to it, that are such as to equip it to provide fund clients at all times with the level of services that it has duly contracted to provide. A fund administration provider must put in place adequate arrangements for staff recruitment, training and supervision.
24. Systems and controls must be 'fit for purpose'. Fund administration providers need to put in place systems that are automated as far as possible, limiting the need for manual intervention. This applies, in particular, where the functions of the administration provider include accounting, registration/transfer, pricing and/or reconciliations (other than in the case of the smallest/least active funds). Depending on the nature and scope of services in each case, the fund administration provider typically also needs a full understanding of the rationale for particular fund structures and of particularly complex investment strategies and/or instruments.
25. The board should ensure that policies and procedures are implemented which require the direct reporting of internal control weaknesses to the board, chief executive and senior executives in a timely manner.
26. The board should ensure that robust arrangements for regulatory compliance are maintained by the fund administration provider.
27. The board is ultimately responsible for the compliance function and should ensure that the directors are provided with sufficient regular information regarding all legal and regulatory compliance activities to allow them to rectify any shortcomings in the fund administration provider's compliance framework.

Prompt and Timely Execution

28. A fund administration provider should deal effectively and in a timely manner with all requests from those persons to whom the fund administration provider is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary.

Competent and Effective Management

29. The fund administration provider should have effective management, commensurate with the nature, scale and complexity of its business. The fund administration provider must also have appropriate management resources to control the affairs of the licensed undertaking, including ensuring compliance with legal obligations and standards under the Code.

Adequate Personnel

30. The fund administration provider must have available suitable numbers of staff who are appropriately trained and competent to discharge their duties effectively. The fund

administration provider should ensure that the responsibilities and authority of each staff member are clear and appropriate given his/her qualifications and experience, and that staff receive the necessary training appropriate for their roles.

31. The fund administration provider should ensure that it has in place systems, controls, policies and procedures to ensure that staff members perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures including those dealing with –
- (a) Applying the subscription monies received by a fund in accordance with its constitution and its prospectus
 - (b) Processing the issue, conversion and redemption of units of a fund
 - (c) Applying the income of a fund in accordance with its constitution and its prospectus
 - (d) Calculating the net asset value of the units, and their issue, conversion and redemption price
 - (e) Maintaining the accounts of a fund
 - (f) Distributing to the participants of a fund all dividends or other distributions, which may from time to time be declared and paid by it on units in a fund
 - (g) Any other services or activities the Minister, acting in the advice of the Authority, may specify by notice published in the Official Gazette

The fund administration provider should ensure that adequate training is provided on an ongoing basis, including training on its Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) responsibilities.

Accounting and other Record Keeping

32. Licensed undertakings must keep and preserve appropriate records in Bermuda, which will at least include such records as are appropriate for their functions as required by any applicable law, and as will enable the provision of information to persons entitled to the information, on a timely basis. In cases where the law is silent, records must be maintained for a minimum period of five years from the end of the transaction or cessation of the business relationship. The client accounting records should disclose with accuracy the transactions and financial commitments of the funds under administration. The fund administration provider's own accounting records should accurately and currently reflect its affairs and should be available for review in a timely fashion, upon request by the Authority. Systems must be in place to ensure that decision-makers, regulators, clients and other relevant stakeholders can receive requisite information in a timely manner. This should include the identity of shareholders, directors, officers or business partners. In addition, records of account and client transactions must be maintained in Bermuda in accordance with the applicable laws.
33. Where the fund administration provider is involved in the valuation of fund assets, it needs to have systems in place that provide for the timely and accurate generation of net asset valuations. As part of this, it needs to be fully familiar with relevant valuation principles and pricing policies. The fund administration provider must also ensure that satisfactory

arrangements are in place, designed to achieve appropriate independence in pricing decisions, as well as effective reconciliations of investment, cash and derivatives positions.

34. The fund administration provider's accounting and record keeping systems must support its compliance with regulatory reporting, such as the annual statutory and other returns, or other reporting that the Authority may require on an ad hoc basis in fulfilment of the Authority's regulatory oversight responsibilities.
35. The Authority does not regard a fund administration provider's records and systems as adequate unless they can enable its business to be prudently managed and the fund administration provider is able to comply with the duties imposed on it by or under the Act. In other words, the records and systems must be such that the fund administration provider is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the public interest. They should also be sufficient to enable the fund administration provider to comply with the notification and reporting requirements under the Act. Delays in providing information or inaccuracies in the information provided will call into question the fulfilment of the requirements of sub-paragraphs 2 (4) and (5) of Schedule 1 to the Act. The systems for client records should be sufficient to enable the fund administration provider to maintain the books and records of clients in the manner required under the Act.
36. The nature and scope of the particular records and systems, which a fund administration provider should maintain, must be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether a fund administration provider's records and systems are adequate, the Authority considers the nature, scale and complexity of its business.

Cybersecurity Risks

37. As with any material risk, all licensed undertakings are required to have robust policies, procedures and controls in place to identify, assess and manage cybersecurity risks on an ongoing basis consistent with the prudent business minimum licensing criterion.
38. The Authority expects fund administration providers to report any material cybersecurity incident to the Authority in a timely fashion. Material cybersecurity incidents generally are those that:
 - (a) Lead to a significant loss of data, or the reduced availability or control of IT systems
 - (b) Affect a large number of customers or clients
 - (c) Result in unauthorised access to or installation of malicious software on the fund administration provider's information and communications systems

Fund administration providers are expected to maintain logs of all cybersecurity incidents together with details of actions taken to resolve them.

Clarity as to Nature and Scope of Functions

39. To ensure clients are dealt with fairly and are informed, the fund administration provider must disclose terms of business with each prospective client, and keep a record of the terms of the agreement with each client, including evidence of the client's agreement to those terms. That agreement should include, but not be limited to, the following provisions:
- (a) A clear description of the services to be provided, fees to be charged and the manner in which fees are expected to be paid
 - (b) A general description of how, and by whom, requests for action are to be given
 - (c) A general description of the process for the termination of the agreement, including provisions for a reasonable notice period, and the consequences of termination, including any termination fees which may be charged
 - (d) A statement that the fund administration provider is licensed by the Authority, including any limitations in this respect
40. A fund administration provider must ensure that it understands fully at all times the nature and scope of the administration functions that it has contracted to provide for each fund client, as well as the detailed arrangements whereby it interacts with other service providers in the course of the day-to-day operations of the fund. Such functions must be adequately documented within the records of the fund administration provider, and any subsequent changes promptly recorded.

Responsibility to Clients and Client Complaint Procedures

41. The fund administration provider must ensure that its business is conducted in such a way as to treat its clients fairly at all times. The fund administration provider should ensure its complaints handling process is transparent. When complaints are made, the fund administration provider should ensure that complaints are properly handled and addressed on a timely basis. The fund administration provider should ensure that a written record of the details of the complaint includes the fund administration provider's response, and any action taken as a result is maintained in writing. The fund administration provider must establish and implement policies and procedures in this respect. The process for handling complaints should be easily disclosed and easily accessible to clients.

Conflicts of Interest

42. Fund administration providers need to be alert at all times to the risk of conflicts of interest arising, whether directly in the course of their own role as fund administration provider or, as relevant, between the fund and its service providers or as between different investors or classes of investors. Fund administration providers need to implement policies, procedures and internal controls for dealing with conflicts of interest. Where conflicts cannot be avoided, fund administration providers need to seek to ensure that the interests of investors are not damaged through undisclosed conflicts of interest.

XIII. OUTSOURCING

43. While the fund administration provider may outsource certain important business roles to third parties or affiliates, such action does not remove the responsibility from the fund administration provider to ensure that all requirements of the Act and related legislation, and the Code, are complied with to the same level as if these roles were performed in-house. In addition, the fund administration provider should have regard to the outsourcing guidance for regulated service providers issued by the Authority and the existing AML/ATF outsourcing guidance.
44. Where the fund administration provider outsources roles to third parties or to affiliated entities, the board must ensure that there is oversight and clear accountability for all such roles as if these functions were performed internally and subject to the fund administration provider's own standards on governance and internal controls. The board should also ensure that the service agreement includes terms on compliance with jurisdictional laws and regulations.

Agreements should not prohibit cooperation with the Authority, and the Authority's access to data and records in a timely manner.

45. Where the board has outsourced a role and/or is considering outsourcing a role, the board must assess the impact or potential impact on the fund administration provider. The board must not outsource a role that is reasonably expected to adversely affect the fund administration provider's ability to operate in a prudent manner. These considerations include where outsourcing could be reasonably expected to:
- (a) Adversely affect the fund administration provider's governance and risk management structures
 - (b) Unduly increase operational risk
 - (c) Adversely affect the Authority's ability to effectively supervise and regulate the fund administration provider
 - (d) Adversely affect client protection

XIV. RISK MANAGEMENT FRAMEWORK

46. Risk identification and management forms a part of any business and, as such, the Authority expects the fund administration provider to have an appropriate risk control framework in place for the benefit of its stakeholders.
47. A fund administration provider must implement an appropriate risk management framework commensurate with the nature, scale and risk profile of its business, its objectives, structure, operations, processes, services and assets.

XV. ADVERTISING

48. The Authority expects a fund administration provider to demonstrate a high level of responsibility in the advertisement of all of its services. In particular, a licensed undertaking must have due regard to Bermuda's reputation and ensure that the manner in which it advertises its services does not violate any local or international laws.
49. The form and content of advertisements must:
- (a) Be clear and ethical
 - (b) Not violate any standards of prudence and fairness
 - (c) Not promote any breach of the Act or other local or international laws
50. For transparency purposes, the fund administration provider must also ensure that its status as a licensed undertaking is disclosed in all advertisements and correspondence. The following wording is suggested: "X is licensed to conduct fund administration provider business by the Bermuda Monetary Authority."

XVI. COOPERATION WITH REGULATORY AUTHORITIES

51. The fund administration provider is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. This includes ensuring that any outsourced service providers are aware of their role in assisting the fund administration provider in meeting its obligations under the Act and related legislation, and the Code.
52. The fund administration provider should also ensure that any contracts or agreements that it enters into do not intentionally, or otherwise, frustrate the Authority's ability to carry out its supervisory or regulatory obligations in relation to the fund administration provider. The fund administration provider should be proactive in alerting the Authority to any significant developments relevant to its business such as:
- (a) Its staffing
 - (b) Its systems and controls environment
 - (c) Its involvement in criminal proceedings either in Bermuda or abroad
 - (d) Issues affecting its ability to meet or continue to meet the minimum criteria for licensing

(In this regard, the Authority would draw the attention of the fund administration provider to sections 12, 24, 29 and 30 of the Act.)



BERMUDA MONETARY AUTHORITY

STATEMENT OF PRINCIPLES

FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019

31 MARCH 2020

Table of Contents

I.	INTRODUCTION.....	3
II.	EXPLANATION FOR THE STATEMENT OF PRINCIPLES	3
III.	SCHEDULE 1: MINIMUM CRITERIA FOR LICENSING.....	5
IV.	PRINCIPLES RELATING TO THE GRANTING OF LICENCES.....	12
V.	POWERS TO OBTAIN INFORMATION AND REPORTS	13
VI.	CONCLUSION.....	14

I. INTRODUCTION

1. This Statement of Principles (the Principles) is made pursuant to section 6 of the Fund Administration Provider Business Act 2019 (the Act) which requires the Bermuda Monetary Authority (the Authority) to publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act in:
 - (a) Interpreting the minimum criteria for licensing specified in Schedule 1 of the Act and the grounds for revocation specified in section 14
 - (b) Exercising its power to grant, revoke or restrict a licence
 - (c) Exercising its power to obtain information or reports and to require production of documents
 - (d) Exercising other enforcement powers
2. The Principles should be read in conjunction with any Guidance Notes which are issued pursuant to section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; and in accordance with section 49M of the Proceeds of Crime Act 1997, and section 12O of the Anti-Terrorism (Financial and Other Measures) Act 2004.
3. The Principles should also be read in conjunction with the Enforcement Guide (Statement of Principles and Guidance on the Exercise of Enforcement Powers) (the Enforcement Guide). The Enforcement Guide sets out the principles in accordance with which the Authority acts or proposes to act in exercising its formal powers to compel compliance or to penalise noncompliance with statutory or regulatory requirements. In relation to enforcement activities, where there are any differences between the Enforcement Guide, the Statement of Principles relative to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (AML Principles), and the Principles, then the content of the Enforcement Guide will prevail.

II. EXPLANATION FOR THE STATEMENT OF PRINCIPLES

4. The Principles, along with the Enforcement Guide, are relevant to the Authority's decisions on whether to issue a licence to a fund administration provider business (Fund Administration Provider) or whether to revoke or restrict a licence once granted. The Authority's interpretation of the minimum criteria for licensing in Schedule 1 and the grounds for revocation in section 14 of the Act, together with the principles underlying the exercise of its powers, encapsulate the main standards the Authority considers when conducting its supervision of a Fund Administration Provider. The functions of fund administration supervision include monitoring the ongoing compliance of Fund Administration Providers with these minimum standards and verifying compliance with the obligations imposed under the Act and the policies and procedures of the Fund Administration Providers. The Authority also monitors a Fund Administration Provider's compliance with other legislative obligations such as those contained in the Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-

Terrorist Financing Supervision and Enforcement) Act 2008 and the relevant Regulations.

5. Where concerns arise relative to a Fund Administration Provider or the conduct of its business during the course of its supervision of the Fund Administration Provider, the Authority will consider the steps that must be taken to address the issue, and where appropriate, it will request by means of persuasion and encouragement that the Fund Administration Provider take remedial action. Where persuasion and encouragement fail, the Authority may adopt stronger measures to ensure compliance. If the Authority considers it necessary to do so, it may, in the public interest, utilise the various powers provided in the Act, including the imposition of restrictions on a licence and, ultimately, revocation of a licence. The process by which the Authority may take enforcement action is set out in the Enforcement Guide.
6. The Principles include references to various policy and guidance papers issued by the Authority from time to time. Copies of the relevant material are generally available from the Authority's website: www.bma.bm.
7. Section III of the Principles considers the interpretation of each of the minimum criteria for licensing in Schedule 1 to the Act. Section IV sets out the considerations relevant to the Authority's exercise of its discretion to grant a licence. Section V sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.
8. The Enforcement Guide sets out the interpretation of the various grounds for the initiation of an enforcement action. The Authority will assess whether to initiate an enforcement action on a case-by-case basis, taking into account the wider context. The assessment will include consideration of whether using alternative tools is more appropriate, taking into account the overall circumstances of the Fund Administration Provider itself, the conduct under review and the wider context.
9. The Enforcement Guide clarifies the circumstances where the Authority may decide to impose restrictions on a licence, including cases of urgency, or ultimately to revoke a licence. It is likely that the Authority would exercise its powers to restrict or revoke a licence in the context of the enforcement process. The Authority may also exercise its discretion to utilise such powers in a supervisory context (e.g., to impose additional reporting requirements or where an institution ceases operations or conducts limited scope business). In accordance with section 18 of the Act, the Authority might use these powers to protect the interests of the public in connection with an external threat that is not connected to the Fund Administration Provider's conduct.

III. SCHEDULE 1: MINIMUM CRITERIA FOR LICENSING

Introduction

10. Before it may grant a licence to a Fund Administration Provider, the Authority has to be satisfied that all the criteria in Schedule 1 to the Act are, or are capable of, being fulfilled by the applicant. Once licensed, Fund Administration Providers are subject to the Authority's continuing supervision and regulation. The Authority assesses whether on an ongoing basis the Fund Administration Provider meets the minimum criteria for licensing. Fund Administration Providers are required to submit information about their business at intervals determined by the Authority in accordance with the Act and any related regulations, rules, guidance notes or codes. Where a Fund Administration Provider fails to meet a criterion, the Authority can and may take action in accordance with the powers vested under the Act and as detailed in the Principles, the AML Principles and the Enforcement Guide.
11. The Act sets out the minimum criteria for licensing to be met by licensed Fund Administration Providers. These criteria are interpreted and applied in the context of the particular circumstances of each Fund Administration Provider, and developments in the sector generally. In addition to reviewing the periodic, annual and other reporting data received from Fund Administration Providers, the Authority's supervision involves detailed prudential discussions with the Fund Administration Provider's senior management, as required. The Authority will determine the frequency of those discussions by using a risk-based approach taking into consideration the nature, size, complexity and risks undertaken by the Fund Administration Provider and the conduct of its business. Meetings may take place either at the Authority's offices or at the Fund Administration Provider's premises.
12. In addition, compliance visits are routinely made on the premises of Fund Administration Providers to add to the Authority's understanding of the Fund Administration Provider's management structures, operations, policies and controls and to assist the Authority in satisfying itself that each Fund Administration Provider continues to conduct its business prudently and in accordance with all relevant criteria. Fund Administration Providers are expected to fulfil the minimum criteria for licensing at all times.
13. Where a Fund Administration Provider becomes aware of breaches or potential breaches of any requirement or a contravention of any prohibition imposed by or under the Act, it is expected that the Fund Administration Provider will alert the Authority forthwith so that any necessary remedial action can quickly be agreed and taken. Similarly, the Fund Administration Provider must alert the Authority to any proposed material change in its business. This will allow the Authority to assess whether the changes affect the Fund Administration Provider's ability to fulfil the minimum criteria for licensing.

14. This part of the Principles sets out the Authority's interpretation of the minimum licensing criteria.

Schedule 1, Paragraph 1: "Controllers and officers to be fit and proper persons"

15. This paragraph provides that every person who is, or is to be, a controller or an officer (i.e. director, secretary or senior executive) of a Fund Administration Provider is to be a fit and proper person to hold the particular position that he or she holds or is to hold. Section 2 of the Act stipulates that an officer includes a person appointed as a director, secretary or a senior executive.

16. With regard to an individual who is, or is to be, a controller or officer, the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge and soundness of judgment to undertake and fulfil his or her particular duties and responsibilities. The standards required of persons in these positions will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position, but not be fit and proper for a position involving different responsibilities and duties.

17. The diligence with which the person is fulfilling, or is likely to fulfil, those duties and responsibilities is also considered so that the Authority can assess whether the person does or will devote sufficient time and attention to them.

18. The Authority's view is that the standards need to be high in the case of persons with primary responsibility for the conduct of a Fund Administration Provider's affairs, taking into account the nature and scale of the Fund Administration Provider's business.

19. In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had previous experience with similar responsibilities, the record in fulfilling them and, where appropriate, whether the person has suitable qualifications and training. As to soundness of judgment, the Authority looks to the person's previous conduct and decision-taking.

20. The probity of the person concerned is very important. It is essential that a person who is responsible for the conduct of a Fund Administration Provider's business is one of high integrity. In contrast to the fitness elements of this criterion, which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.

21. Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record, including but not limited to convictions for fraud or other dishonesty, which would clearly be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of law, including legislation covering the trust, banking,

insurance, corporate services, money services, digital assets or investment sectors or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice.

22. In addition, the Authority considers whether the person has been involved in any business practices that appear to the Authority to be deceitful or oppressive or improper, or which would otherwise discredit his or her method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes insofar as they may be relevant to the minimum criteria for licensing, the public interest and the interests of clients and potential clients.
23. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies. Those persons who have been censured or disqualified are unlikely to be fit and proper persons to hold a particular position.
24. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time, and a person's subsequent conduct are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.
25. Once a Fund Administration Provider is licensed, the Authority has continuing regard to the performance of the person in exercising his or her duties. Imprudence in the conduct of a Fund Administration Provider's business, or actions which have threatened (without necessarily having damaged) the public interest will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by a Fund Administration Provider to conduct its business with integrity and professional skills will reflect adversely on the probity and/or competence and/or soundness of judgment of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfil the criterion based on several instances of such conduct, which if taken individually, may not lead to that conclusion.

Shareholder Controllers

26. Shareholder controllers, as defined by sections 3(4) and 3(5) of the Act, may hold a wide variety of positions relating to a Fund Administration Provider, and the application of the fit and proper criterion takes account of this fact. The key consideration is the likely or actual impact on the interests of clients and potential clients of a person holding the particular position as shareholder controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the Fund

Administration Provider, the higher the threshold will be for the shareholder controller to fulfil the criterion. Thus, for example, higher standards will generally be required of a shareholder controller owning, say, 20% or more of the shares of a Fund Administration Provider compared with a shareholder controller owning 10%.

27. In reviewing the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority considers two main factors. First, it considers what influence the person has or is likely to have on the conduct of the affairs of the Fund Administration Provider. If the person does, or is likely to, exercise close control over the business, the Authority would look for evidence that he/she has the probity and soundness of judgment and relevant knowledge and skills to perform the functions in relation to any activity carried on by a Fund Administration Provider. On the other hand, if the shareholder does not, or is not likely to, influence the directors and management of the Fund Administration Provider on the detailed conduct of the business, it would not be necessary to require such a level of relevant knowledge and experience.
28. The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the Fund Administration Provider through ‘contagion’ which undermines confidence in that Fund Administration Provider. For example, if a holding company, or a major shareholder, were to suffer financial problems, it could damage confidence of clients or potential clients in the stability or financial integrity of the licensed Fund Administration Provider. Generally, the higher the shareholding, the greater the risk of ‘contagion’ if the shareholder encounters financial difficulties. The risk of contagion is not, however, confined to financial weakness. Publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the Fund Administration Provider. Fund Administration Providers are expected to notify the Authority immediately if they become aware of material concerns regarding the suitability of a shareholder controller.
29. In the case of a controller who ‘directs’ or ‘instructs’ a shareholder controller, similar considerations apply to those relevant to assessing the fulfilment of the shareholder controller’s criterion. In other words, the standards that an indirect controller needs to satisfy are likely to be, at a minimum, the standards also required of the person who is indirectly controlled.
30. Where a person is a controller by virtue of ‘directing’ or ‘instructing’ the board of a Fund Administration Provider, the standards required are high. The controller has to have the probity and relevant knowledge, experience, skills and diligence for managing a Fund Administration Provider. The qualities required are those which are also appropriate for the board of directors or partners of a Fund Administration Provider.

Schedule 1, Paragraph 2: "Business to be conducted in prudent manner"

31. Paragraphs 2(1) and (7) of Schedule 1 to the Act make it clear that there is a general requirement for Fund Administration Providers to conduct their business in a prudent manner. It is the overall responsibility of the board, partners and senior management of an institution to ensure that there is effective control over the entire business and that it is conducted prudently. Board members, partners and senior management must understand the underlying risks in the business and be committed to maintaining a robust control environment.
32. Paragraphs 2(2) to (6) set out a number of specific requirements, each of which must be fulfilled before a Fund Administration Provider may be regarded as conducting its business in a prudent manner.
33. Paragraph 2(7) of the Act makes it clear that the specific requirements outlined in paragraphs 2(2) to (6) are not exhaustive. Accordingly, the Authority takes into account a range of other considerations in assessing whether a Fund Administration Provider is prudently managed. These include, for example, the Fund Administration Provider's:
 - (a) Management and corporate governance arrangements (such as, in the case of a company, the composition of the board of directors and the arrangements for the board's overall control and direction of the institution)
 - (b) General strategy and objectives
 - (c) Anti-Money Laundering/Anti-Terrorist Financing policies and procedures
 - (d) Planning arrangements
 - (e) Policies on accounting and market conduct
 - (f) Recruitment arrangements and training to ensure that the Fund Administration Provider has adequate numbers of experienced and skilled staff in order to carry out its various activities in a prudent manner
 - (g) Ability to maintain adequate liquidity to meet its actual and contingent obligations as they fall due
 - (h) Procedures for overseeing, managing and monitoring all outsourced activities
34. Particularly close attention is also paid to the arrangements in place for preventing and detecting criminal activities, and for ensuring compliance with the Fund Administration Provider's legal obligations in preventing money laundering and terrorist financing. The Authority would also expect a Fund Administration Provider to occupy premises suitable for the purpose of conducting its business.
35. Failure by the Fund Administration Provider to comply with applicable laws in foreign jurisdictions in which the Fund Administration Provider or its subsidiaries (if any) operate may also affect the Authority's assessment of prudent conduct.

36. A Fund Administration Provider should have policies and procedures to enable it to comply with international sanctions in force in Bermuda.
37. Fund Administration Providers face a wide variety of potential major financial risks in conducting their business; although the possibility of many of these risks crystallising is generally remote. A Fund Administration Provider will not be regarded as carrying on its business in a prudent manner unless it maintains minimum net assets of \$50,000 or such amount as the Authority may direct taking into account consideration the nature, size and complexity of the Fund Administration Provider. Moreover, a Fund Administration Provider must also effect a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of its operations.
38. In judging the adequacy of insurance protection, the Authority looks to be satisfied that the scope and scale of cover in place provides reasonable assurance of the ability of the Fund Administration Provider to continue to operate in the event that it should face either major damage to its infrastructure or material claims from clients for loss or damage sustained. It is in the first instance for those directing the business of the licensed undertaking to assess the level of risk they face in the business and to determine the type and extent of coverage appropriate for that business. The Authority will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business.

Schedule 1, Paragraphs 2 (4) and (5): “Adequate accounting and record-keeping systems”

39. The Authority does not regard a Fund Administration Provider’s records and systems as adequate unless they can enable its business to be prudently managed and the Fund Administration Provider is able to comply with the duties imposed on it by or under the Act or other provisions of law. In other words, the records and systems must be such that the Fund Administration Provider is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the public interest. They should also be sufficient to enable the Fund Administration Provider to comply with the notification and reporting requirements under the Act. Thus, delays in providing information or inaccuracies in the information provided will call into question the fulfilment of the requirement of paragraphs 2 (4) and (5). The systems for client records should be sufficient to enable the Fund Administration Provider to maintain its books and records with satisfactory back-up in place.
40. The nature and scope of the particular records and systems which a Fund Administration Provider maintains should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether a Fund Administration Provider’s records and systems are adequate, the Authority considers its size, the nature of its business, the manner in which the business is structured, organised and managed and the nature, value and complexity of its transactions.

Schedule 1, Paragraph 3: “Integrity and skill”

41. This paragraph is concerned with the manner in which the business of the Fund Administration Provider is conducted and is distinct from the question of whether its controllers and officers are fit and proper persons. The business of a Fund Administration Provider must be conducted ethically and honestly, and the staff employed by the Fund Administration Provider must have the skills and knowledge appropriate to the nature and scale of the Fund Administration Provider.
42. The integrity element of the criterion requires the Fund Administration Provider to observe high ethical standards in conducting its business. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the Fund Administration Provider fails to comply with recognised ethical standards such as those embodied in various codes of practice. The Authority considers the seriousness of the breach of the code, whether the breach was deliberate or an unintentional and unusual occurrence, and its relevance to the fulfilment of the criteria in Schedule 1 and otherwise to the interests of clients and potential clients.
43. The Authority would expect a Fund Administration Provider to have a number of employees sufficient to carry out the range and scale of its business. The Authority, in determining whether a Fund Administration Provider has sufficient personnel, will take into account the human resources that the Fund Administration Provider may draw upon through other arrangements (e.g., outsourcing, secondments, or other similar arrangements as well as the methods of recruitment) to ensure that the Fund Administration Provider employs an adequate number of persons who are fit and proper to perform the duties for which they are employed.
44. Staff must be provided with on-the-job training on the Fund Administration Provider’s internal policies, procedures and internal controls. The Fund Administration Provider should ensure that adequate training is provided that is specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities and cyber/information security policies and controls.
45. A Fund Administration Provider shall establish procedures to ensure the adequate supervision of staff in their dealings with clients. Appropriate records relating to the training, experience and qualifications of staff must be maintained.

Schedule 1, Paragraph 4: “Corporate Governance”

46. This paragraph provides that the Fund Administration Provider shall implement corporate governance policies and processes as the Authority considers appropriate

given the nature, scale, complexity and risk profile of the Fund Administration Provider. The Authority will take into consideration the Fund Administration Provider's compliance with the Corporate Governance Policy when assessing whether the Fund Administration Provider meets the minimum criterion for licensing to implement corporate governance policies and processes.

47. In the case of a Fund Administration Provider which is a company or partnership, the business should be (a) effectively directed by at least two persons; and (b) under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, scale, complexity and risk profile of the Fund Administration Provider. The Authority recognises that standards of good corporate governance may differ between Fund Administration Providers according to the size and complexity of their respective businesses.
48. In the case of a Fund Administration Provider which is a company, the directors should include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the circumstances of the Fund Administration Provider and the nature, size, complexity and risk profile of the Fund Administration Provider.
49. The Authority considers that non-executive directors can play a valuable role in bringing an outsider's independent perspective to the running of the business and to ensure proper challenge to the executive directors and other management. The Authority sees non-executive directors as having, in particular, an important role as members of a Fund Administration Provider's audit committee or in performing the role which such a committee would otherwise perform.

Schedule 1, Paragraph 5: "Consolidated Supervision"

50. The position of a Fund Administration Provider within the structure of any group to which it may belong must be such that it will not obstruct the conduct of effective consolidated supervision. The Authority may agree to take on a wider role of consolidated supervisor of a Fund Administration Provider and its related institutions, particularly when the related institutions may have implications for the Fund Administration Provider. Under such an arrangement, the Fund Administration Provider and its related institutions are expected to fully cooperate with and provide all requested information to the Authority.

IV. PRINCIPLES RELATING TO THE GRANTING OF LICENCES

51. To grant a licence under the Act, the Authority needs to be satisfied that all the minimum licensing criteria in Schedule 1 are met. In order to be so satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains a residual discretion not to grant a licence – notably, if it sees reason to doubt that the criteria will

be met on a continuing basis or if it considers that for any reason there might be significant threats to the public interest or the interests of clients or potential clients.

52. The Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the Fund Administration Provider and relevant, connected parties to enable it to monitor the fulfilment of the criteria and to identify potential threats to the Fund Administration Provider's clients.

V. POWERS TO OBTAIN INFORMATION AND REPORTS

53. The Authority's supervisory arrangements for licensed Fund Administration Providers comprise three principal elements. First, the Authority conducts certain off-site analysis and reviews, based on regular data received from Fund Administration Providers. This is supplemented by a regular programme of prudential discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current performance, material compliance and control issues, and business development and strategy questions. Finally, the Authority conducts routine on-site reviews during which it assesses a Fund Administration Provider's ongoing compliance with aspects of the licensing criteria and, in particular, with paragraph 2 (2) of Schedule 1 to the Act. These reviews of compliance are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the Fund Administration Provider's operations. They also provide an opportunity for the Authority to check, through sample testing, that the procedures and practices in place within a Fund Administration Provider are in practice, enabling it to fulfil the specific obligations imposed by the Proceeds of Crime Act 1997 and the associated Regulations.
54. Supervision involves the receipt and analysis of a variety of regular and ad hoc information from Fund Administration Providers. The Authority's standard reporting arrangements are kept under review and amended from time to time in light of developments.
55. Section 49 of the Act provides formal powers of the Authority by notice in writing to require from a Fund Administration Provider such information as it may reasonably require for ensuring that the Fund Administration Provider is complying with the provisions of the Act and any code of practice, and for safeguarding the interests of clients and potential clients of the Fund Administration Provider. The section also provides for the Authority to require a Fund Administration Provider to make available a report by its auditor (or by an accountant or other person with relevant professional skill) on any aspect of, or on any matter about which the Authority has required or could require the Fund Administration Provider to provide information. In the case of reports commissioned under section 49 (1)(b) of the Act, the Authority has agreed that they will, wherever possible, be commissioned from a Fund Administration Provider's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular

technical skills or when the Authority has had previous concerns about the quality or completeness of work conducted by the external auditor.

56. The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, the Authority's general policy is to use its own staff to assess directly through the on-site work, described above, the adequacy of a Fund Administration Provider's systems and controls. Nonetheless, where particularly specialised work is required or other special considerations arise, the Authority may commission a professional report under section 49.
57. Section 50 of the Act provides statutory powers for the Authority by written notice to require a Fund Administration Provider to produce relevant documents or information that is required for the performance of the Authority's functions. This power can also be used to obtain relevant documents in the possession of other persons and to require information or documents from entities related to a Fund Administration Provider. Section 51 of the Act provides the Authority with specific powers to enter any premises occupied by persons on whom notice under sections 49 or 50 has been served for the purpose of obtaining relevant information or documents. The Authority makes routine use of its powers under sections 49 and 50 when conducting its on-site review visits to licence holders, in order to deal with any client confidentiality issues that might arise in the course of compliance testing.
58. Much of the information required by the Authority for its supervision of Fund Administration Providers is provided pursuant to the Authority's powers under the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements—notably, the requirement for a Fund Administration Provider to submit a statement of compliance, signed by two directors (one of whom must be the chief executive or equivalent officer), certifying that the Fund Administration Provider has complied with the minimum licensing criteria (as provided for in Schedule 1 to the Act).

VI. CONCLUSION

59. The Principles are of general application, and seek to take into account the diversity of Fund Administration Providers that may be licensed under the Act, and the prospect of institutional and market changes. Consequently, the Principles may have to be revised and further developed over time. If the Authority makes a material change to the Principles, the Authority will publish a statement of the change or the revised version of the Principles.
