

23 April 2021



BMA House
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Dear Stakeholders,

Re: Consultation Paper - Proposal for a Conduct of Business Regulatory Regime

The Bermuda Monetary Authority (Authority) wishes to thank our stakeholders for their continued engagement and support in progressing our key strategic initiatives. The Authority appreciates all feedback received on the conduct of business regulatory regime proposal (CP) issued in December 2020. The Authority remains committed to working closely with stakeholders to ensure that the conduct of business regulatory regime is aligned with international standards, while proportionate and effective for the Bermuda market.

We noted that stakeholders were generally supportive of expanding the Authority's mandate to ensure financial services customers are provided with relevant regulatory protections.

Notwithstanding this general support, several salient issues were raised that the Authority wishes to address; a summary of these comments and the Authority's response is set out below.

Substantive Comments and the Authority's response

Application of the CP proposals

As noted in the CP, the Authority proposes to embed the identified principles and underlying requirements by revising the sector-specific codes of practice/conduct. This approach will continue to allow licensees and registrants the flexibility to design conduct of business processes that fit their business models and reflect the diversity of Bermuda's financial services market. The Authority aims to review, and where appropriate, codify the best practices that are currently taking place in the Bermuda market. We invite industry stakeholders to continue engaging with us to achieve a framework that can be applied proportionately and appropriately. The Authority believes that implementing standards that are flexible in the application can bolster confidence in our market without compromising competitiveness.

Timing of implementation and transition provisions

Several stakeholders asked for further clarification of the timelines the Authority envisions for implementing changes to the Bermuda Monetary Authority Act 1969 (BMA Act), issuing revised codes of conduct or practice, and creating new codes (where the sector is not currently subject to any Authority-issued code).

This year the Authority intends to put forward a bill to amend the BMA Act, providing the statutory remit to create the oversight of financial institutions' conduct of business to promote customer protection.

As noted in the CP, the Authority is taking a sector-by-sector approach to codify the conduct principles, first addressing the insurance and banking sectors. In the latter half of this year, the Authority will issue separate consultation papers to propose:

- i. Amendments to the existing insurance code of conduct
- ii. A new code of conduct for banks

The Authority proposes a transition period to allow licensees and registrants to embed new policies, processes and other internal controls and systems to comply with revised codes.

Providing definitions

Many stakeholders raised the issue of lack of clarity regarding the principles and the application of certain requirements to specific business contexts.

The Authority acknowledges that the principles were drafted at a high level to apply the conduct standards across the various financial services industries. The Authority reaffirms that the high-level principles represent the general expectations for the good conduct of business. However, given the diversity of entities under the Authority's supervisory remit, the Authority proposes to address the technical definitions and requirements underpinning those principles on a sector-by-sector basis. As the Authority moves to review the codes of practice or conduct in each sector, it will continue to engage with industry associations and other interested parties to implement practicable conduct standards that are defined appropriately for the sector in question.

Regulatory treatment of retail and non-retail customers

Many stakeholders raised the importance of tailored regulatory treatment for products and services marketed and sold to retail customers. Particularly, stakeholders called for reduced

requirements for non-retail customer relationships given the sophisticated nature of the transactions.

The Authority considers it necessary for the overarching principles to apply to all sectors regardless of the nature of the customer. However, the Authority acknowledges that reduced information asymmetries and greater counterparty sophistication in the non-retail context call for a risk-based application of requirements. As such, the Authority notes that the existing codes' "proportionality principle" will continue to apply. Following the Authority's usual approach, supervisors will engage with entities to assess their operations vis- à-vis the relevant code to determine compliance. Where it is intended that a portion of the relevant code applies only to entities dealing with retail customers, this will be indicated in the same way as is currently utilised in existing codes.

Cross-border scope of the regime

Certain stakeholders raised concerns that the regime could result in conflicts of standards if the regime's scope extends to business conducted outside Bermuda.

The Authority notes that the amendments to the relevant codes of conduct or practice covering the conduct of business will be applied in the same way as all other provisions of the relevant code. The Authority will continue to take an outcomes-based approach to determine if the entity is subject to similar conduct standards after discussions with foreign regulators. Entities should also assess whether the requirements in another jurisdiction achieve similar outcomes as that of the Bermuda framework. At a minimum, registrants and licensees must comply with the Authority's requirements as set out in the codes. With this said, the Authority accepts that the entity may comply with what they deem as a higher standard required by a foreign jurisdiction.

Once more, the Authority thanks stakeholders for their contributions to the consultation exercise. We remain committed to partnering with Bermuda's financial services providers to ensure these proposals are translated into a framework that aligns with current best practice and appropriately protects customers.

Sincerely,

Bermuda Monetary Authority