



30 June 2023

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Dear Stakeholders,

Re: Consultation Paper: Proposed Enhancements to Supervisory Powers within the Investment Funds Act 2006

The Bermuda Monetary Authority (Authority or BMA) would like to thank stakeholders for their continued engagement as the Authority enhances its investment funds supervisory framework to ensure it remains effective and aligned with evolving international standards. The Authority appreciates your feedback and is committed to ensuring Bermuda’s regulatory regime remains Fit-for-Purpose.

The Authority sought feedback on proposed amendments to enhance the supervisory powers in the Investment Funds Act 2006 (Act). These amendments seek to ensure that the Authority continues to safeguard participants’ interests effectively and efficiently by using targeted corrective action when breaches of the regulatory requirements are identified.

RESPONSE TO INDUSTRY FEEDBACK

The Authority’s responses to the **key substantive comments** received from stakeholders are outlined below.

I. Act - New sections 5B (4A), 6(4A), and 26(6)

Stakeholder comment: Stakeholders expressed concerns that the proposed late fee, as drafted, could easily accumulate to an unreasonable amount. As such, they proposed changing the monthly base fee from \$1,000 to \$250 and imposing a maximum amount; \$1,000 was proposed.

BMA response: While the Authority is mindful that protracted non-compliance with the above provisions could result in a substantial level of penalty being accumulated over time, the conduct of the regulated entity in permitting such an extended period of non-compliance could be indicative of that the operators, officers and



service providers of the fund is not conducting in a prudent manner, as required by the Minimum Criteria for Licensing.

Accordingly, the Authority reiterates its Principles of Enforcement as enunciated in the Statement of Principles and Guidance on the Exercise of Enforcement Powers, 2018 (Enforcement Guide) wherein regulated entities are reminded of the Authority’s expectation that all such entities are compliant at all times with relevant obligations. The Enforcement Guide further states that non-compliance creates risk to customers and may threaten the long-term sustainability of the regulated entity.

Having considered the feedback provided, the, the proposed late filing fee will be revised so that it reflects a single late fee of \$1,000. This change will be applied to the various sections where late fees for delayed annual filings have been proposed.

II. Act - New section 6 (3E)(c)

Stakeholder comment: Stakeholders recommended revising the proposed new subsection 6(3E)(c) such that the obligation will be to file an offering document which reflects all “material changes”.

BMA response: The Authority has no objection to the proposed change.

III. Act- Amendments to Section 25

Stakeholder comment: Stakeholders expressed concerns with the level of late fees proposed in this section and recommended the following amendment to the wording within the Act:

“An operator who fails to notify the Authority as required by subsection (1) is liable to a penalty of \$250 if it fails to comply.”

BMA Response: The late fee relates to a failure to notify the Authority of material changes as required by the Act. The late fee imposed cannot be lower than the application fee related to material change notifications. Thus, having considered the feedback, the Authority will revise the late fee to \$500. The Authority believes that this revised fee level will be sufficiently dissuasive, but also appropriate.

Additionally, the Authority will consider revising the wording within the new provision so that it is clear that the penalty in question relates to material changes requiring written notification.



IV. General comment

Stakeholder comment: Stakeholders requested a transition period to be applied so their clients are aware of the changes and have time to make appropriate arrangements.

BMA Response: The Authority’s intention remains for the amendments to come into effect as soon as they are passed by the Legislature as new requirements are not being introduced; rather, the enhancements focus on introducing penalties for noncompliance with existing requirements.

V. Rule 13 (3) and Rule 14 (4)

Stakeholder comment: Stakeholders expressed concerns that the proposed penalty is not appropriate or in line with the fees referenced/proposed in the Amendment Act.

BMA Response: A fund’s audited statements are a critical tool within the Authority’s supervisory toolkit because they provide independent verification of the financial position of the fund in question. Additionally, financial statement disclosures provide pertinent information that promotes transparency and clarity to investors and the Authority.

As such, the late fee that has been proposed reflects the importance of the audited statements being prepared and filed in a timely manner. Without diminishing this importance, having considered the feedback provided, the Authority proposes to revise the fee for the late filing of an audit to a flat fee of \$1,000.

VI. The use of penalties

Stakeholders observed that it is important to distinguish the administrative penalties proposed in respect of breaches of various filing obligations from existing civil penalty provisions.

Consequently, the Authority has decided to instead expand upon the Authority’s existing power (pursuant to section 17(8)) to impose a “late fee” for contravention of various filing/certification/notification requirements, in cases where the application of a civil penalty would not be appropriate.



VII. Further comments from the Authority

The Authority would like to inform the public that clause 18c has been removed from the initial consultation documents. This clause stated that the amendment to the Act was in relation to a proposed late fee of \$200 for failure to comply with section 26(1)(b); however, 26(1)(b) was referenced in error. The original intention was to reference 26(1)(a), which addresses reports to be provided to the Authority, as a way of introducing a late fee related to the late filing of a Fund's Net Asset Value (NAV).

Upon further reflection, it was determined that the appropriate place to introduce a late fee related to the late filing of NAV's is via the introduction of a new section 37(2A) in the Act and an associated amendment to Rule 7 of the Investment Fund Rules. It is worth noting that this revised approach remains consistent with the initial policy position.

Additionally, in response to further feedback received, late fees imposed on authorised and registered funds for late audits, previously provided for in the amendment to the Investment Fund Rules, will now be provided for in the new section 37(2A) in the Act, with an associated amendment to Rule 13(3), 14(4) and 14(5) of the Investment Fund Rules. Similarly, late fees imposed for delays in publishing the offering document reflecting all material changes, which was previously provided for in the amendment to the Offering Document Rules, will now be provided for in the new section 38(9) of the Act, with an associated amendment to Rule 5(1A) of the Offering Document Rules.

Next steps

The Authority intends to finalise the wording for the recommended amendments to the Act and Rules, considering the feedback received.

The Authority would like to thank stakeholders for their feedback and remains committed to working with relevant parties in the finalisation of the supervisory framework enhancements. Any stakeholder who wishes further clarification or additional information on the proposed enhancements to the investment funds framework should contact the Authority directly at policy@bma.bm.

Sincerely,

The Bermuda Monetary Authority

