



Bermuda Monetary Authority Consultation Paper

Securing Enhanced Protection for Investors Revised Code of Conduct for Investment Providers

The Review

In order to ensure that Bermuda's laws and regulations are as up to date as possible and in line with international good practice, the Bermuda Monetary Authority (the "**Authority**"), in conjunction with a Working Party created for the purpose, has gone out to the investment services industry with a Consultation Paper (the "**Review**") relating to the General Business Conduct and Practice Code of Conduct issued under the Investment Business Act 2003 (the "**Draft Code**"). The BMA confirmed its reasoning for conducting the Review as follows:

"The Authority embarked on this exercise in an effort to improve practices amongst investment providers for the ultimate protection of investors. The project stemmed from a review the Authority conducted in 2009 into disclosure practices prevalent throughout the industry. The review revealed quite widespread deficiencies which were common to a number of investment providers. It was determined that the Authority should work closely with industry to revise the Code and a Working Group was established comprising representatives of the Authority, the investment industry and the Pensions Commissioner. The exercise broadened to include a review of the entire Code to enable the production of an expanded up-to-date document which reflected international good practice."

The current version of the Code was issued in 2004 ("**Current Code**"). The purpose of the Current Code / Draft Code is to set out specific standards for the conduct and practice of business by investment providers and failure to comply with the provisions of the same are taken into account by the Authority when determining whether an investment provider's business is being conducted in the requisite prudent manner.

Key Areas of Proposed Changes

The Review concentrates on the following main areas:

- **Professional Conduct Standards** – this incorporates the section “Responsible Conduct” from the Current Code which provides detailed guidance as to the standards required in this area. Investment providers are expected to conduct their business with their investors in a professional and ethical manner both in accordance with the Draft Code and with customary / applicable industry standards.
- **Client Relationships** – this has been expanded in order that investment providers should provide clients with enhanced disclosure and to require them to create client risk profiles. The CFA Asset Manager Code of Professional Conduct was used as a reference point here.

The investment provider will be required to undertake ‘Risk Profiling’ including obtaining all relevant financial and other information from investors including their investment objective/s in order to better ensure investor understanding of risk.

Investment providers will be required to ensure that investors have all relevant and salient performance data and other information to enable them to make informed investment decisions.

There are detailed disclosure requirements relating to:

- i) performance fees;
- ii) fees;
- iii) track records (firm and manager); and
- iv) valuations and benchmarks (including what a relevant benchmark is and explicit guidance for pension providers).

Performance fees and track records must be consistent and investment providers are encouraged to utilize global industry standards to achieve the same such as the CFA Institute’s Global Investment Performance Standards: “GIPS”.

- **Portfolio Management** – investment providers must give investors an “IPS” – ‘Investment Policy Statement’ in which is set out matters relating to asset allocation, liquidity requirement and risk tolerance indications. An IPS must be provided to an investor prior to any investor monies being invested on their behalf.

Guidance re asset allocation has also been added to the Draft Code regardless of whether the mandate is discretionary or directed. In either case the investment provider should seek to diversify an investor’s portfolio and must otherwise allocate stock fairly and uniformly.

Other sections added include distribution of transactions amongst clients and the valuation of investment which are not marketable.

- **Conflicts of Interest** – guidance on this is now contained in its own section of the Draft Code and includes direction on research/analysis fairness, front running and use of material non-public information. Investment providers must be in a position to identify conflicts when they arise and communicate such matters to their investors. Where an investment provider has a material interest in a transaction, such must be communicated to the client prior to such investment being made. There should be a system in place under which disclosure of actual or potential conflicts should be made to clients.

- **Templates** – the Draft Code provides these documents in order that there is a prescriptive guideline for the receipt and dissemination of information between the parties and include:
 - i) Terms of Business Document;
 - ii) Risk Profile Letter;
 - iii) Risk Disclosure Statement;
 - iv) Fees & Expenses Disclosure Report;
 - v) Performance and Valuation Statement;
 - vi) Conflicts of Interest Disclosure Report; and
 - vii) Asset Allocation model.

Comment

The combination of the proposed changes set out in the Draft Code and the provision of the template documents is designed principally to facilitate enhanced investor protection in the context of workable guidance and tools for investment providers.

The Review serves to underline Bermuda’s continuing commitment to providing a leading and responsible offering to the investment services industry in particular and to the global business community as a whole and as such is to be warmly welcomed as an initiative.

To access the Consultation Papers please [click here](#).

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