



Setting the global standard for investment professionals

April 30, 2010

Ms. Betty Dale
Bermuda Monetary Authority
BMA House
43 Victoria Street
Hamilton, HM12

RE: Consultation Paper -- Securing Enhanced Protection for Investors; Revised Code of Conduct For Investment Providers.

Dear Ms. Dale:

Thank you for the opportunity to comment on the Bermuda Monetary Authority's (the Authority's) efforts to revise its General Business Conduct and Practice Code of Conduct (the Code).

CFA Institute, through its members' experience in international markets and different investment disciplines, represents the interests of investors and investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide. CFA Institute promotes fair, open, and transparent global capital markets, and advocates for investors' protection.

Like the Authority, CFA Institute believes that establishing and promoting best ethical practice by investment professionals through codes of conduct is a foundational element of protecting investor interests. As a result, CFA Institute has developed and promoted a number of codes of conduct, standards, and best practices for its members, investment professionals and investment firms, including its Code of Ethics and Standards of Professional Conduct, the Asset Manager Code of Professional Conduct and Global Investment Performance Standards, among others.

We strongly support the Authority's efforts at investor protection by requiring all investment providers subject to the Authority's jurisdiction to abide by its Code of Conduct. We appreciate the Authority's recognition, by consulting the CFA Institute's work in this area when creating and revising its Code, that CFA Institute standards, including the Asset Manager Code of Professional Conduct and Global Investment Performance Standards represent best global practice. Because of the Authority's close review of CFA Institute practice, it is not surprising that all the ethical principles



that CFA Institute deems critical to an effective code of conduct, including full and fair disclosure, fair dealing, independence and objectivity, suitability, assessment of risk, diligence, skill, and reasonable basis, among others, are all included in the Authority's Code.

While the Code thoroughly encompasses the fundamental ethical principles that must be included in an effective code of conduct for investment professionals, we do have suggestions for how the Authority can enhance, clarify, and strengthen the Code in some instances by revising existing language or including additional provisions. These specific suggestions are included on the Summary of Consultation Comments form in the format requested by the Authority in Attachment A.

Thank you again for the opportunity to comment on the proposed revisions to the Code. Please do not hesitate to contact us should you wish to discuss any of the points raised.

Yours faithfully,

A handwritten signature in black ink that reads 'Charles Cronin'.

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A handwritten signature in black ink that reads 'Jon Stokes'.

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CFA Institute is a global, not-for-profit professional association of 99,639 investment analysts, advisers, portfolio managers, and other investment professionals in 137 countries, of whom 87,969 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 137 member societies in 58 countries and territories.

**Comments on the Bermuda Monetary Authority’s
Consultation Paper
Revised Code of Conduct for Investment Providers**

Summary of Consultation comments

(Deadline for Submissions: April 30th 2010)

Name	Paragraph/ Section	Comment	Resolution (for BMA use)
CFA Institute	2.3	<p>We support the code’s discussions regarding the need for qualified, trained and properly supervised staff at the investment provider. We encourage the BMA to consider an inclusion for providing the necessary technological resources to the staff to ensure adequate protection of client assets throughout the investment process.</p> <p>Additionally, it is important for clients to know when a strategic member of the staff departs the organization. Provision F.4.k of the CFA Institute Asset Manager Code of Professional Conduct (the Code)¹ states Managers must disclose “Significant personnel or organizational changes that have occurred at the Manager.” This information could be meaningful to a client’s investment decision.</p>	

¹ The CFA Institute Asset Manager Code of Professional Conduct is available from our website: www.cfapubs.org/doi/pdf/10.2469/ccb.v2009.n8.1

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CFA Institute	2.4 2.13	<p>With the reordering of the Code, these standards now exist in the same section. The impact could be enhanced through combining the principles into a single standard. The language of standard 2.13 is clearer in regards to the expectations of the investment provider’s actions.</p> <p>Should you determine to keep them separate, we encourage you to strengthen the language of standard 2.4. For example, the last part of the first paragraph could be changed from “...applicable to business conducted by the investment provider.” to “...which govern the business conducted by the investment provider.”</p>	
CFA Institute	2.9	<p>We wish the BMA to consider adding a requirement for the establishment of a compliance officer position. Provisions D.2 of the CFA Institute Asset Manager Code of Professional Conduct states Managers must “Appoint a compliance officer responsible for administering the policies and procedures and for investigating complaints regarding the conduct of the Manager or its personnel.”</p> <p>The guidance to D.2 further adds “(w)here possible, the compliance officer should be independent from the investment and operations personnel and should report directly to the CEO or board of directors.” Further, “(t)he compliance officer should document and act expeditiously to address any compliance breaches and work with management to take appropriate disciplinary action.” These actions align with the current principle of standard 2.9.</p>	
CFA Institute	2.11	<p>Along with planning for the cessation of business, it is important to prepare for possible business interruptions. Provision D.6 of the CFA Institute Asset Manager Code of Professional Conduct states Managers must “Establish a</p>	

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		<p>business-continuity plan to address disaster recovery or periodic disruptions of the financial markets.”</p> <p>The guidance to D.6 outlines a number of factors for investment providers to consider in the establishment of such a plan. This plan provides for the temporary safeguarding of client interest during short-term interruptions similar to the standard’s requirements for the winding down of the business.</p>	
CFA Institute	3.14	<p>We are concerned that the simple disclosure of fee structures in the Standard Client Agreement may not be effective in its intent to inform clients. While this standard aligns with provision F.4.d of the CFA Institute Asset Manager Code of Professional Conduct, stricter requirements on the form and nature of the fee disclosures would benefit the interests of clients.</p> <p>The guidance to F.4.d includes “(a) general statement that certain fees and other costs will be assessed to investors may not adequately communicate the total amount of expenses that investors may incur as a result of investing. Therefore, Managers must not only use plain language in presenting this information but must clearly explain the methods for determining all fixed and contingent fees and costs that will be borne by investors and also must explain the transactions that will trigger the imposition of these expenses.”</p> <p>Additionally, “(m)anagers should also retrospectively disclose to each client the actual fees and other costs charged to the clients, together with itemizations of such charges when requested by clients. This disclosure should include the specific management fee, any incentive fee, and the amount of commissions Managers paid on behalf of clients during the period.”</p>	

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CFA Institute	4.3	<p>We are concerned with the potential for unethical actions being in compliance with the standard as written. We agree that investment providers should not make recommendations motivated by personal interests, which is clear in the standard. However, allowing clients to approve transactions that benefit the investment provider, may create situations where the benefit to both is the driving factor. The standard should require that investment actions and recommendations are in the best interest of the client, while also considering the impact on the integrity of the market.</p>	
CFA Institute	4.6	<p>We encourage the BMA to consider clarifying the applicable parties addressed in this standard, especially with regards to the transactions outside Bermuda. We are unclear as to whom is being referenced in the final part “...provided that the <i>person</i> has accepted such arrangements in writing.” Is the person the Client or the external investment provider?</p> <p>Additionally, investment providers should be diligent in their review of external service providers and properly disclose any fee arrangements to their benefits before the client accepts the arrangements.</p> <p>Another aspect of best execution is the utilization of soft dollar arrangements through client commissions. The allowance of such arrangements do not appear to be covered in the update, but in the sample Terms of Business template, Note 25 discusses training and products received as other benefits typically acquired through such arrangements. We encourage the BMA to incorporate the appropriate principles for the use and disclosure of soft dollar arrangements.</p> <p>Provision C.3 of the CFA Institute Asset Manager Code of Professional Conduct addresses the proper use of client commissions. C.3 states Managers must “Use</p>	

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		<p>commissions generated from client trades to pay for only investment-related products or services that directly assist the Manager in its investment decision-making process, and not in the management of the firm.”</p> <p>The guidance to C.3 includes “Managers should disclose their policy on how benefits are evaluated and used for the client’s benefit. If Managers choose to use a soft commission or bundled brokerage arrangement, they should disclose this use to their clients. Managers should consider complying with industry best practices regarding the use and reporting of such an arrangement, which can be found in the CFA Institute Soft Dollar Standards².”</p>	
CFA Institute	4.9	<p>We are concerned with the term “uniformly” in this standard as it may be interpreted as treating clients “evenly”. This may lead to practices that disadvantage some clients.</p> <p>Provision C.5 of the CFA Institute Asset Manager Code of Profession Conduct states Managers must “Establish policies to ensure fair and equitable trade allocation among client accounts.” This provision aligns with standard 4.9, but refers to an “equitable” allocation of trades.</p> <p>The guidance to C.5 includes “(w)hen allocating shares of an initial or secondary offering, Managers should strive to ensure that all clients for whom the security is suitable are given opportunities to participate. When Managers do not receive a large enough allocation to allow all eligible clients to participate fully in a particular offering, they must ensure that certain clients are not</p>	

² The CFA Institute Soft Dollar Standards is available from our website:
<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2004.n1.4005>

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		given preferential treatment and should establish a system to ensure that new issues are allocated fairly (e.g., pro rata).”	
CFA Institute	4.11	<p>We concur that the preferred method for the valuation of investments for which there is no third-party market be undertaken by an independent party. This could be the responsibility of independent members of the board or an outside valuations expert.</p> <p>In situations where an independent source is not readily obtainable, we would require the investment provider to use widely accepted valuation methods and techniques which would be applied consistently over time and investments. Thus we offer this update to bullet point (b) of this standard:</p> <p>(b) confirms to widely accepted valuation methods and techniques that have been agreed expressly with the client at the time that a discretionary management agreement is signed.</p>	
CFA Institute	5.1	<p>The language of the standard and subsequent standards appear to conflict with one another. The stated requirement “An investment provider shall avoid conflicts of interests ...” is in opposition with the later text dealing with situations where conflicts occur. We support the call to avoid conflicts when possible and a small change can clarify the standard to reflect the eventuality of a conflict arising.</p> <p>Suggested update:</p> <p>An investment provider shall endeavor to avoid conflicts of interests...</p>	
CFA Institute	5.6	We appreciate the effort to highlight the important fact that trading on material non-public information is prohibited, if not illegal. However, the standard could be	

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		<p>clarified as to the broader misuse of such information.</p> <p>Material non-public information is regularly and legally provided during certain business transactions. This exchange would appear to be prohibited as the standard is currently written.</p> <p>A research analyst may update a research report based on material non-public information, without including the specific information. With this being a normal expectation of his job, he may not personally gain from the issuance of the updated report, but such actions would still be prohibited.</p> <p>With the wide potential uses for material non-public information and the evolving investment profession, we recommend a broader related standard. Provision C.1 of the CFA Institute Asset Manager Code of Professional Conduct states Managers must “Not act or cause others to act on material nonpublic information that could affect the value of a publicly traded investment.” The broader based principle will remain more applicable as practices change.</p>	
CFA Institute	No specific	<p>Beginning with the stated objectives of the code in section 1.2, there are several places that address the implicit need to act with skill, care and diligence in the services provided. Sections 2.16 and 3.13 specifically address the need to take “reasonable steps” with regards to providing clients with sufficient information to make informed decisions. However, there is no explicit standard related to the diligence or reasonable basis needed by the investment provider in determining the recommendation of an investment.</p> <p>We encourage the inclusion of such a standard with this update. Provision B.4 of the CFA Institute Asset Manager Code of Professional Conduct states Managers must</p>	



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		<p>“Have a reasonable and adequate basis for investment decisions.” Such a standard would require the investment provider to undertake the necessary review and analysis commiserate with their investment strategy, before advising its clients.</p>	
CFA Institute	No Specific	<p>The CFA Institute Asset Manager Code of Professional Conduct requires some disclosures that are not reflected in the updated code. These provisions address informing clients of corporate governance issues and policies of the investment provider. We recommend their inclusion to further enhance the information available to clients.</p> <p>Provision F.4.h states Managers must disclose “Shareholder voting policies.”</p> <p>Provision F.4.J states Manager must disclose “Results of the review or audit of the fund or account.”</p>	