



9<sup>th</sup> February 2016

Dear Industry Stakeholders,

**Re: Corporate Governance Policy For Corporate Service Provider Business Act 2012**

The Bermuda Monetary Authority (the Authority) wishes to thank stakeholders for their continued engagement and feedback as the Authority develops the corporate service provider (CSP) framework for the Bermuda market.

On 2<sup>nd</sup> June 2015, the Authority issued a consultation paper (the Consultation Paper) setting out a draft Corporate Governance Policy (the Policy) for corporate service providers and initiated a period of industry consultation on the matter. A number of submissions were made in relation to the Policy, and the Authority's response to the key observations made and the views expressed are outlined below.

**Proportionality Principle: General**

*Summary of comments:* There were concerns raised by the industry with respect to the Authority's application of the proportionality principle when regulating the CSP sector.

*Resolution:* The Consultation Paper noted that the Authority would adopt a proportional approach reflective of the "size, complexity, structure and risk profile of an institution's business" when making a determination of compliance with the Policy. In an effort to reinforce this position and address feedback provided by stakeholders, the Policy has been revised to include a new paragraph (2). This paragraph addresses proportionality in the context of the "nature, scale and complexity" of a CSP, provides some insight on what the Authority views to be included within the meaning of each term and makes it clear that the elements will be considered collectively rather than individually.

**Proportionality Principle: Complexity**

*Summary of comments:* Within the context of the overall feedback provided regarding proportionality, the element raised most frequently related to the complexity, or lack thereof, of CSPs. Specifically, a common theme in the feedback provided was that CSPs did not tend to be complex institutions, and the view was expressed that in a number of cases the guidance provided within the Policy was more suited to, say, complex investment providers than to CSPs.

*Resolution:* The Authority recognises that most CSPs, even ones holding unlimited licenses, are unlikely to have particularly complex business models and that, rather, what will tend to differ between licensed firms is the size of their businesses and the range of activities they perform. Accordingly, several references to "complexity" within the Policy have been removed. The Authority's focus remains on conveying that it views the risks associated with a CSP to be greater, and thus the governance arrangements it would expect to be in place more advanced, the larger the institution and the wider the range of activities performed and client types serviced.

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## **Independence**

*Summary of comments:* While the importance of independence in governance arrangements was recognised by the industry, there was an interest in receiving additional guidance regarding what the Authority viewed as constituting independence. There were also questions raised regarding the relative cost, particularly for smaller CSPs, of appointing independent non-executive directors.

*Resolution:* It is important to note that the principles, which form the core of the Policy, do not mandate the appointment of independent non-executive directors. Rather, the accompanying guidance addresses the appointment of directors and references independent non-executive directors. Even this, however, is done using words such as “ideally” and “is encouraged”, which affords the licensed entities the ability to make informed cases to the Authority and the Authority the discretion to accept that different approaches will be appropriate in different instances. This has been further recognised via minor revisions to the language within the Policy, including replacing the term “independent directors” with the term “non-executive directors (see paragraph 22).

## **Risk Management Function and Internal Control System**

*Summary of comments:* There was feedback provided by the industry that it would be sensible to address considerations related to internal controls within the context of the risk management function, rather than separately.

*Resolution:* The Authority concurs that considerations related to internal controls may be appropriately consolidated within the risk management section of the Policy. Accordingly, the principle which addressed the internal control system (Principle 7) has now been removed, with relevant content being consolidated within the principle addressing risk management (Principle 6), thereby abbreviating and simplifying the Policy.

## **Conclusion**

The Authority thanks stakeholders for their feedback, and remains committed to working with industry and other interested parties to ensure that the results achieved are in the best interests of the Bermuda market.

Sincerely,

The Bermuda Monetary Authority