

**Dated:** 21 APRIL 2004

**MEMORANDUM  
OF  
UNDERSTANDING**

**BERMUDA**

**Bermuda Monetary  
Authority**

**UNITED KINGDOM**

**Financial Services  
Authority**

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# Contents

<b>RECITALS</b>	<b>2</b>
<b>OPERATIVE PART</b>	<b>3</b>
Interpretation	3
Purpose and Principles	3
Provision of Unsolicited Information	3
Requests for Assistance	4
Procedure for Requests	4
Assessing Requests	5
Contact Points	5
Further Procedures	5
Costs	6
Confidentiality	6
Consultation	6
Commencement	6
Termination of existing MOU	6
<b>APPENDIX 1: FURTHER PROCEDURES FOR ENFORCEMENT MATTERS</b>	<b>8</b>
Further details to be contained in requests for assistance	8
Further ground for denial of request	8
Requests to Sit in	8
Joint Investigations	8
Rights of persons preserved	9
<b>APPENDIX 2: FURTHER PROCEDURES FOR COLLECTIVE INVESTMENT SCHEME MATTERS</b>	<b>10</b>
Preliminary	10
Re-designation	10
Consultation	11
Annual Report	11
Provision of information	11
Assessment Visits	12

# **Memorandum of Understanding (“MoU”)**

**Between**

**Bermuda Monetary Authority (“BMA”) And Financial Services Authority (“FSA”)**

## **Recitals**

- A. The Bermuda Monetary Authority is the primary regulatory body for Bermuda's financial services and markets. It operates pursuant to the Bermuda Monetary Authority Act 1969 under which it was established and which provides it with a number of principal objects, including the supervision, regulation and inspection of financial institutions operating in or from within Bermuda, and the promotion of the financial stability and soundness of financial institutions. In addition, the Authority has specific licensing and supervisory responsibilities under the following individual regulatory statutes: the Insurance Act, 1978; the Banks and Deposit Companies Act, 1999; the Investment Business Act, 2003; and the Trusts (Regulation of Trust Business) Act, 2001.
- B. The FSA is the United Kingdom's national financial services and markets regulator. As such it administers the Financial Services and Markets Act 2000 (“FSMA”) which provides among other things for the supervision of financial services, financial service providers, financial products and financial markets. Also, in its capacity as the competent authority (i.e. the UK Listing Authority) under Part VI of FSMA, the FSA is responsible for regulating listed issuers and their corporate advisers (known as “sponsors”).
- C. The BMA and the FSA wish to enter into this MOU to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. The BMA and the FSA believe such co-operation will enable them to more effectively perform their functions.

## Operative Part

### Interpretation

1. In this MoU, unless the context requires otherwise:
  - “administering” an applicable law, regulation or requirement includes enforcing the same;
  - "applicable laws, regulations and requirements" means any law, regulation or requirement applicable in Bermuda and/or in the United Kingdom, and where the context permits include:
    - (a) relevant European legislation that has not yet been transposed into UK domestic law;
    - (b) any law, regulation or requirement applicable in Bermuda or the United Kingdom; and
    - (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;
  - “Authority” means the BMA or the FSA;
  - “FSA” means the Financial Services Authority of the UK;
  - “BMA” means the Bermuda Monetary Authority;
  - “permitted onward recipient” means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;
  - “person” means a natural person, legal entity, partnership or unincorporated association.

### Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Bermuda or the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

### Provision of Unsolicited Information

5. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

## **Requests for Assistance**

6. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include for example:
- (a) providing information in the possession of the requested Authority;
  - (b) confirming or verifying information provided to it for that purpose by the requesting Authority;
  - (c) exchanging information on or discussing issues of mutual interest;
  - (d) obtaining specified information and documents from persons;
  - (e) questioning or taking testimony of persons designated by the requesting Authority;
  - (f) conducting inspections or examinations of financial services providers or arranging for the same; and
  - (g) permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraphs (e) - (f) above.

## **Procedure for Requests**

7. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any written request:
- (a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
  - (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
  - (c) the purpose for which the information or other assistance is sought;
  - (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
  - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Appendix 1; and
  - (f) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

## **Assessing Requests**

8. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
9. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
  - (a) whether the request conforms with this MoU;
  - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
  - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
  - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
  - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of Appendix 1;
  - (f) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
  - (g) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
10. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 9 in the discretion of the requested Authority.

## **Contact Points**

11. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MOU should be directed.

## **Further Procedures**

12. The further procedures set out in:
  - (a) Appendix 1 will apply in relation to actual or possible enforcement matters;
  - (b) Appendix 2 will apply in relation to collective investment schemes recognised under section 270 of FSMA;

- (c) any other Appendices covering specific areas of financial services (such as banking) or specific issues, as agreed in writing between the Authorities, will apply.

### **Costs**

13. If the cost of fulfilling a request is likely to be substantial, the requested Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs.

### **Confidentiality**

14. An Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable laws, regulations and requirements. The recipient Authority will endeavour to consult with the other Authority if it proposes to pass on information to another person. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.
15. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

### **Consultation**

16. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
17. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### **Commencement**

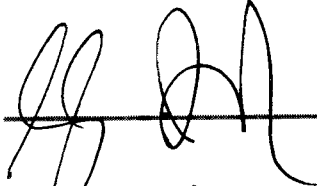
18. This MoU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended by agreement in writing.

### **Termination of existing MoU**

19. Any previous MoUs between the BMA and the FSA or any of their predecessors are terminated.

**Executed by the Parties:**


**For the BMA**



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Date: 29 3. 04

**For the FSA**



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Date: 21 APRIL 2004



## **Appendix 1: Further Procedures for Enforcement Matters**

### **Further details to be contained in requests for assistance**

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request:
  - (a) a description of the conduct or suspected conduct which gives rise to the request;
  - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
  - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
  - (d) the relevance of the requested assistance to the specified rule or law; and
  - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

### **Further ground for denial of request**

2. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part:
  - whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

### **Requests to Sit in**

3. If, following a request from the requesting Authority, the requested Authority conducts an interview of any person, the requested Authority may permit a representative of the requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the requested Authority.

### **Joint Investigations**

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions,

may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.

5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to BMA for a joint investigation should be made, through Assistant Director, Enforcement. Suggestions to the FSA should be made to the Director, Enforcement.

### **Rights of persons preserved**

8. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

## **Appendix 2: Further Procedures for Collective Investment Scheme Matters**

### **Preliminary**

1. In this Appendix:
  - “collective investment scheme” has the same meaning as in section 235 of FSMA;
  - “HMT” means Her Majesty’s Treasury (UK);
  - “designated” means designated by HMT in an order made under section 270 of FSMA;
  - “recognised scheme” means a collective investment scheme that is recognised under section 270 of FSMA.
  
2. This Appendix applies to and in relation to recognised schemes managed in, and authorised under the law of, Bermuda.
  
3. Under section 87(1) of the Financial Services Act 1986 a collective investment scheme which was not a recognised scheme by virtue of section 86 but was managed in and authorised under the law of a country or territory outside the United Kingdom was a recognised scheme if -
  - (a) that country or territory was designated for the purposes of the section by an order made by the secretary of state; and
  - (b) the scheme was of a class specified by the order.
  
4. Bermuda was designated for the purposes of section 87(1) by the Financial Services (Designated Countries and Territories) (Collective Investment Schemes) (Bermuda) Order 1988 (SI 1988/2284).
  
5. By virtue of Article 67(1) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (SI 2001/2636) the status of Bermuda as a designated territory has continuing effect as if the Order designating Bermuda had been made by HMT under section 270(1) of the Financial Services and Markets Act 2000.
  
6. The purpose of this Annex is to help ensure that the criteria referred to in paragraph 3 for designation of Bermuda continue to be satisfied.

### **Re-designation**

7. Revision of the relevant law or practice in Bermuda may require formal re-designation by HMT. Revisions of a less significant nature and revisions that are designed to replicate changes to the law, rules or practice in the UK may be agreed with the FSA without formal re-designation.

## **Consultation**

8. To assist the FSA to fulfil its regulatory obligations under FSMA, in particular to secure the appropriate degree of protection for consumers, the BMA must take reasonable care to ensure that it does not grant or allow any waivers or modifications from the relevant law or regulations including the giving of guidance to similar effect, in respect of a recognised scheme, unless it has first sought the views of the FSA.

## **Annual report**

9. The BMA shall submit to the FSA an annual self-assessment report covering authorisation and supervision of recognised schemes within its territory. Notwithstanding that the precise format and nature of the coverage of this report will be agreed between the FSA and BMA from time to time, this report must include at least the following:
  - (a) an overview of the reporting period;
  - (b) details of recognised schemes in operation during the reporting period;
  - (c) new recognised scheme applications received during the reporting period;
  - (d) recognised scheme amalgamations, applications to terminate authorisation, terminations, amendments and transfers occurring during the reporting period;
  - (e) new managers and trustees of recognised schemes during the reporting period (including promoter);
  - (f) material guidance and waivers given to recognised schemes;
  - (g) supervision visits conducted during the reporting period;
  - (h) material administrative or financial sanctions or fines imposed against recognised schemes and any manager, authorised corporate director, trustee, depository, fund adviser or administrator of any such scheme; and
  - (i) future proposals to amend legislation which might impact upon the operation of recognised schemes.
10. The self-assessment report must be produced annually, covering a 12-month period, from 1<sup>st</sup> June to 31<sup>st</sup> May. The FSA would expect to receive the report no later than 12 weeks after the end of the reporting period. The FSA will send to the BMA a response to the matters contained in the report.

## **Provision of information**

11. To the extent permitted by applicable laws, regulations and requirements, each Authority shall take all reasonable steps on a timely basis to provide the other Authority with any information that is in its possession or is discovered which will be likely to assist in administering the laws, regulations or requirements of the other Authority, if provided to the other Authority, which relate to or might impact on the recognition of the collective investment schemes under section 270 of FSMA.

**Assessment Visits**

12. The FSA will undertake assessment visits of Bermuda on a 5 yearly basis, or more frequently if the FSA considers that this is appropriate. The FSA will send a visit report to the BMA following every assessment visit. The BMA will meet the FSA's reasonable costs (including travel and accommodation) for inspection visits.

## **FSA List of Contact Points**

A list of FSA contact points is set out below and is divided between Enforcement and Supervision matters.

If it is not clear from the list who to contact about a specific matter or if it relates to a number of different areas, please direct your query to the General Contact Point at the end of the list.

### **1. Enforcement Matters**

#### **Enforcement Matters**

##### **Contact details**

FSA: Director, Enforcement  
Financial Services Authority  
9<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7066 1396  
Facsimile: 44-20-7066 9723

## **2. Supervision Matters**

### **Markets and Listing matters**

#### **Contact details**

FSA: Director, Markets and Exchanges  
Financial Services Authority  
6<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7066 5900  
Facsimile: 44-20-7066 9729

### **Investment Firms matters (including pensions and superannuation providers)**

#### **Contact details**

FSA: Director, Investment Firms Division  
Financial Services Authority  
11<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7066 4600  
Facsimile: 44-20-7066 4601

## **Insurance matters (including friendly societies)**

### **Contact details**

FSA: Director, Insurance Firms Division  
Financial Services Authority  
15<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7066 0900  
Facsimile: 44-20-7066 9769

## **Deposit-taking matters**

### **Contact details**

FSA: Director, Deposit Takers  
Financial Services Authority  
14<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7066 3220  
Facsimile: 44-20-7066 3221

## **Major Financial Groups matters**

FSA: Director, Major Financial Groups Division  
Financial Services Authority  
6<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS



UNITED KINGDOM

Telephone: 44-20-7066 1500

Facsimile: 44-20-7066 9760

## **Collective Investment Scheme matters**

### **Contact details**

FSA: Head of Department, Collective Investment Schemes and Product Regulation

Department

Financial Services Authority

10th Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-7066 4530

Facsimile: 44-20-7066 9717

### **3. Fall-back Contact Point**

All FSA MoUs have a lead responsibility centre appointed to ensure the smooth implementation of the MoU. If you are not sure who in the FSA to contact about a matter from the list above, or if the issue relates to a number of different areas, please contact:

[mou.enquiries@fsa.gov.uk](mailto:mou.enquiries@fsa.gov.uk)

Your request will be forwarded as quickly as possible to the appropriate lead contact within the FSA, although a direct communication with a responsible division will probably produce a more rapid response.

## **BMA List of Contact Points**

A list of BMA contact points is set out below and is divided between Enforcement and Supervision matters.

If it is not clear from the list who to contact about a specific matter or if it relates to a number of different areas, please direct your query to the General Contact Point at the end of the list.

### **1. Enforcement Matters**

#### **Enforcement Matters**

##### **Contact details**

BMA: Assistant Director, Legal  
Enforcement Division  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12  
BERMUDA  
Telephone: (441) 297-0223  
Facsimile: (441) 292-7471

### **2. Supervision Matters**

#### **Markets and Listing Matters**

##### **Contact details**

BMA: Superintendent, Banking, Trust & Investment  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12  
BERMUDA  
Telephone: (441) 297-0203  
Facsimile: (441) 292-7471

**Investment Firms matters**

**Contact details**

BMA: Superintendent, Banking, Trust & Investment  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12  
BERMUDA  
Telephone: (441) 297-0203  
Facsimile: (441) 292-7471

**Insurance matters**

**Contact details**

BMA: Supervisor of Insurance  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12  
BERMUDA  
Telephone: (441) 297-0205  
Facsimile: (441) 292-7471

**Deposit-taking matters**

BMA: Superintendent, Banking, Trust & Investment  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12  
BERMUDA  
Telephone: (441) 297-0203  
Facsimile: (441) 292-7471

**Collective Investment Scheme matters**

BMA: Superintendent, Banking, Trust & Investment  
Bermuda Monetary Authority  
Burnaby House  
26 Burnaby Street  
Hamilton HM 12

*BMA List of Contacts*

BERMUDA

Telephone: (441) 297-0203

Facsimile: (441) 292-7471

**3. Fall-back Contact Point**

All BMA MoU's have a lead responsibility centre appointed to ensure the smooth implementation of the MoU. If you are not sure who in the BMA to contact about a matter from the list above, or if the issue relates to a number of different areas, please contact:

[info@bma.bm](mailto:info@bma.bm)

Your request will be forwarded as quickly as possible to the appropriate lead contact within the BMA, although a direct communication with a responsible division will probably produce a more rapid response.