Bermuda Bankers Association

Cumberland House, 7th Floor

1 Victoria Street, Hamilton HM11

30 September 2020

Bermuda Monetary Authority (BMA)

Attn: Policy and International Affairs

43 Victoria Street

Hamilton HM12

Bermuda

RE: A CONDUCT OF BUSINESS REGULATORY FRAMEWORK FOR BERMUDA

Via Email – [conduct@bma.bm](file:///C%3A%5CUsers%5Cmschulz%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CA7ISV110%5Cconduct%40bma.bm)

The Bermuda Bankers Association (BBA) appreciates the opportunity to provide its views in response to the BMA’s request for comments on its Discussion Paper (DP) concerning the establishment of a business conduct regime.

The BBA is steadfastly supportive of clear and well-coordinated and principles-based regulation and supervision around significant activities that impact Bermuda’s financial system. In furtherance of this position we reached out to the team at the Consumer Affairs department in 2019, with a pledge to cooperate with their consumer protection initiatives. We also sought their feedback on the nature and volume of complaints received over a five-year period and continue to work with them to address complaint activity in the banking sector.

The BBA also revised and posted its Banking Code of Ethical Conduct in February 2020, to codify our unwavering commitment to treat all customers in an ethical, transparent and accountable manner, and we are enclosing a copy of that document for your reference.

While we are in support of the BMA being our conduct regulator (as opposed to Government ministry), we do have some recommendations to foster an even playing field for all participants in the financial services sector.

The DP discusses implementation of high-level principles across all Authority-regulated financial services but we note that there are a number of financial service providers that directly compete with us, particularly in lending, that are not currently regulated by the BMA and this can create the risk of an uneven application of ethical business conduct, should lesser standards apply outside of the regulated sector.

While the DP does touch on the concept of “pay day” lenders, we note the presence of other entities (nonbank financial institutions and private lenders) that also engage in lending activities.  Our members also note that in the private banking space, there are a number of foreign entities who transit in and out of Bermuda and bind their contracts in other jurisdictions.  While they generally service customers that are more affluent and sophisticated, there are still vulnerable persons that could be at risk and as a matter of jurisdictional integrity, a business conduct regime should apply to all entities interacting with Bermuda residents. The activities of these non-regulated foreign entities will need to be addressed in a thorough and timely manner as competitor cross border activity can be undertaken without a local license or oversight.

BBA further advises that regulatory changes could also have the unintended consequence of withdrawal of services and or products to certain customer segments by the currently regulated entities, if the increased cost in applying “consumer protection” regulatory requirements precludes the cost-effective servicing of this segment.

Lastly, the BBA ExCo is aware of the July 24th Ministerial Statement by Deputy Premier Roban on measures to protect bank customers in mortgage and lending transactions, and we encourage the BMA to use this prospective conduct of business guidance to specifically address certain areas invoked by Mr. Roban, such as the establishment of a foreclosure review tribunal and other actions that would fundamentally change the current full recourse contract standard.

The BBA stands ready to work with the BMA and Government to meet all of the provisions contained in our published Banking Code of Ethical Conduct and we look forward to continued constructive dialogue with both the BMA and the Consumer Affairs department to identify and address specific and documented instances of behavior that is not consistent with that code.

We welcome the opportunity to discuss our views at your convenience and please direct any questions to the undersigned.

Kind regards,

Thomas J. O’Rourke

Thomas O’Rourke

Chief Executive Officer

Bermuda Bankers Association