GENERAL COMMENTS:

- The expectation is that the **Level 2** process would flesh out the **Level 1** Directive. It is noted, however, that there remain quite a considerable number of open issues throughout the Consultation Paper and, in particular, many terms and phrases used lack clarity and remain open to interpretation *(e.g. - what is meant by "relevant information necessary"…).*

- The Paper seems to extend the jurisdiction of the EU directly into third countries. This is not believed to be the intent of the Directive, and the processes should be proportionate. For example, the need for on-site visits [Box 1, 4.a) is not understood and surely this process should be subject to local law and procedure.

- As a concept, "Equivalency" was rejected at the Directive level. Surely the aim should be to ensure an end result that is effectively the same, rather than a replication of the exact form (as it is the former meaning rather than the latter that the term 'equivalency' actually implies).

- There is concern over resources available to the relevant regulatory authority. In this context it is not clear what precisely is intended by terminology such as, e.g. *"effectively supervised"* or [Box 1, 5.], *"adequate resources"* [Box 2, 1a)]

- Confidentiality/Data protection - there should be requirement for maintaining the confidentiality of information obtained from a particular entity.

- Non-duplication – it is considered that, to the extent relevant information may be obtained in one jurisdiction, production of the same information should not then be required from sources in another jurisdiction. For example, to the extent in a particular case there has been a sub-delegation to a FSA regulated entity, there should be no additional requirement for the same information to be provided by the entity in Bermuda.

SPECIFIC COMMENTS

III. Delegation - Articles 20(1)(c) 20(1)(d) and 20(4)

A. Any Memorandum of Understanding (**"MOU**") should be based on IOSCO principles, to avoid proliferation of bilateral agreements with varying standards.

B. 4(c) ,l The right to conduct on-site inspections are extended to ESMA. This seems to be a step too far. ESMA must leave on site inspections to the Bermuda domestic regulatory agency, i.e. The Bermuda Monetary Authority ("**BMA**").

C. 4(d) It is unclear what regulatory breach is being referred to here. It is unclear whether this reference relates exclusively to a breach of domestic regulations or regulations under the Directive?

D. 5 This is regarded as being too narrow. Most regulatory frameworks provide for a financial institution to be exempted or excluded if they fulfill certain criteria. This should therefore permit a delegation to persons who are entitled to an exemption, or exclusions based on local criteria, which are equivalent to those established under EU legislation.

E. 9 This provides that a third-country authority should be deemed to be independent if it satisfies the Criteria set out in Part II of the IOSCO Objectives and Principles for Securities Regulation and relevant Methodology and the Basle Committee Core Principles. Third-country authorities need greater clarity on the process by which they will be accepted as providing equivalent regulatory standards.

F. There needs to be clarity on the tests for equivalence as far as the assessment of legislation is concerned. This is still uncertain.

IV. Depositories - Article 21(6)

The earlier comment on the need for clarity on issue of equivalence applies here too.

V. Supervision and Cooperation between EU and Third-Country Regulators

It will be necessary for the BMA to negotiate the form and content of cooperation agreements with other third-country regulators.

VI. Cooperation / Exchange of Information with EU Competent Authorities - Article VIII

It will be a matter for the BMA, to negotiate the form and content of cooperation agreements with other third-country regulators.