

# WIRRAL COUNCIL

## PENSIONS COMMITTEE

**23 JANUARY 2017**

<b>SUBJECT:</b>	<b>MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE (MIFID) CONSULTATION</b>
<b>WARD/S AFFECTED:</b>	<b>NONE</b>
<b>REPORT OF:</b>	<b>MANAGING DIRECTOR FOR DELIVERY</b>
<b>KEY DECISION?</b>	<b>NO</b>

### **1.0 EXECUTIVE SUMMARY**

- 1.1 This report provides members with background information on MIFID II, a European Union Directive that regulates firms who provide services to clients such as the LGPS with a range of financial instruments such as shares, bonds, and units in collective investment schemes which is currently the subject of a consultation exercise.
- 1.2 A major and contentious element in the proposals for MIFID II is the reclassification of local authorities as “retail investors” which would fundamentally change the way in which local authority pension funds conduct investment business with their counterparties in relation to all asset classes.

### **2.0 BACKGROUND AND KEY ISSUES**

- 2.1 The Markets in Financial Instruments Directive (MIFID) is the EU legislation that regulates firms who provide services to clients linked to ‘financial instruments’ (shares, bonds, units in collective investment schemes and derivatives), and the venues where those instruments are traded.

The Markets in Financial Instruments Directive (MiFID) is the framework of European Union (EU) legislation for:

- investment intermediaries that provide services to clients around shares, bonds, units in collective investment schemes and derivatives (collectively known as ‘financial instruments’) and
- the organised trading of financial instruments

MiFID was applied in the UK from November 2007, but is now being revised to improve the functioning of financial markets in light of the financial crisis and to strengthen investor protection.

The changes are currently set to take effect from **3 January 2018**, with the new legislation being known as MiFID II - this includes a revised MiFID and a new Markets in Financial Instruments Regulation (MiFIR).

- 2.2 The implementation allows local authorities to opt up to professional status, and it is likely that the vast majority of local authorities, and certainly all pension funds, will want to do this. However, as outlined in the appendix, the tests proposed by the FCA to enable opt up are so difficult that they will prevent many, if not all, local authorities from opting up.
- 2.3 The FCA are consulting on the implementation of the directive, not on the directive itself. The point at issue is *how* the directive is implemented, not *whether* it is implemented. However, the proposals by the FCA that affect local authorities go beyond what is in the original EU legislation.

### **3.0 RELEVANT RISKS**

- 3.1 As alluded to in 1.2, if the current proposals are implemented and local authorities are reclassified as "retail investors" there are likely to be serious consequences for the effective implementation of pension fund strategies going forward.
- 3.2 In particular, such a reclassification is likely to prevent local authorities accessing the full range of asset classes and vehicles that are currently used to implement their global investment strategies across all mainstream asset classes which would have a detrimental impact on investment performance and returns as pension funds seek to bridge the gap between their asset and liability profiles.

### **4.0 OTHER OPTIONS CONSIDERED**

- 4.1 Once MIFID II takes effect from 3 January 2018 it will be a mandatory requirement

### **5.0 CONSULTATION**

- 5.1 The consultation process with regard to this element of MIFID II closed on 4 January 2017 and submissions have been made by organisations such as the Local Government Pension Scheme Advisory Board, the Local Pensions Partnership, and individual LGPS Funds.
- 5.2 Merseyside Pension Fund made a submission to the FCA (Financial Conduct Agency) dated 21 December 2016 which is attached as an appendix to this report.

### **6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS**

- 6.1 There are no outstanding previously approved actions.

### **7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 7.1 There are no implications arising directly from this report.

### **8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

- 8.1 Addressed in 3.0.

## **9.0 LEGAL IMPLICATIONS**

9.1 MIFID II is due to take effect on 3 January 2018.

## **10.0 EQUALITIES IMPLICATIONS**

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(b) No because there is no relevance to equality.

## **11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS**

11.1 There are no carbon usage implications, nor any other relevant environmental issues arising from this report.

## **12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

12.1 There are no planning or community safety implications arising from this report.

## **13.0 RECOMMENDATION/S**

13.1 That members are informed of the potential implications of MIFID II and the ongoing consultation process.

## **14.0 REASON/S FOR RECOMMENDATION/S**

14.1 That members are informed of the potential implications of MIFID II and the current status of the consultation process.

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## **APPENDICES**

Markets in Financial Instruments Directive (MIFID II) Implementation –Consultation Paper III Director of Pensions 21 December 2016

## **BACKGROUND PAPERS/REFERENCE MATERIAL**

MIFID II FCA [www.fca.org.uk](http://www.fca.org.uk)

Local Government Pension Scheme Advisory Board - Response to Markets in

Financial Instruments Directive II Implementation Consultation Paper III

Local Pensions Partnership submission to HM Treasury 15 December 2016

**BRIEFING NOTES HISTORY**

Briefing Note	Date

**SUBJECT HISTORY (last 3 years)**

Council Meeting	Date