



Our Ref: MPF/PJW

MIFID Coordination
Markets Policy & International Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Your Ref:

Direct Line: 0151 242 1309

Please ask for: Peter Wallach

Date: 21 December 2016

Dear Sirs,

**Markets in Financial Instruments Directive (MIFID II Implementation –
Consultation Paper III**

I refer to the above mentioned consultation and I am responding on behalf of Wirral Council in its capacity as the Administering Authority of the Fund.

Merseyside Pension Fund (MPF) is part of the statutory Local Government Pension Scheme. MPF undertakes the investment management of assets in excess of £7.5bn, and pension administration on behalf of the five Merseyside district authorities, over 170 other employers and more than 125,000 active, deferred and pensioner members.

Classification

Although not the subject of the consultation, we wish to state our disappointment that the reclassification of local government pension funds as retail investors is taking place. MPF has a longstanding, experienced and qualified in-house investment team which has managed the Fund's substantial assets across a wide range of asset classes for a number of years, interacting with counterparties as professional investors. It is a retrograde and bewildering step for us to be classified as retail investors.

LGPS funds are subject to regulations (SI 2016 No 946 – The Local Government Pension Scheme (Management & Investment of Funds) Regulations 2016) which include the requirement to take proper advice when appointing investment managers. The investment regulations also provide for a 'prudent person' regime and this reclassification will result in a lack of consistency both with this and the treatment of private sector defined benefit schemes.

The elective professional status process is not appropriate for local authorities in view of the way in which their decision making is structured. Decisions are often implemented by officers under delegation; the individual is not necessarily the decision-maker.



Not all investment managers have the processes in place to enable investors to 'opt up' to professional status which will limit our ability to implement properly considered and constructed investment strategies. It also calls into question the status of some of the existing investment arrangements into which the Fund has entered.

It is inconsistent with the Government's desire for greater infrastructure investment by local government funds.

Election for professional status

We do not consider that the process as it stands provides local authorities with an effective route to professional status in regard to their pension fund activities. The proposals may not provide elective professional status across all asset classes and an assessment may be required on an individual asset class or transaction basis.

Response to questions in the consultation directly affecting LGPS funds (questions 16 and 17).

Question 16: Do you agree with our approach to revise the quantitative thresholds as part of the opt-up criteria for local authorities by introducing a mandatory portfolio size requirement of £15m? If not, what do you believe is the appropriate minimum portfolio size requirement, and why?

The quantitative test (based on COBS 3.5.3R(2)) requires that the criteria in paragraph (a) and the criteria in either paragraph (b) or (c) must be satisfied:

- (a) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds £15,000,000
- (b) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters
- (c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged

The size of the portfolio cut off (a) has been set so that all LGPS funds will qualify under (a). However there is less certainty as to how many would qualify under (b) as, even in public markets, we are long-term investors with long holding periods and low turnover. Indeed, private market investments are extremely unlikely to be undertaken at the frequency suggested. A more nuanced assessment of relevant market (e.g. public/private) and frequency of transactions would seem to be appropriate.

This could mean that only LGPS pension funds able to pass tests (c) and (a) will be able to successfully complete the opt-up process. This means test (c) is particularly important. Whilst MPF has a number of staff who have worked in the financial sector for many years, there is scope for uncertainty in relation to test (c).

The uncertainty lies in who is being assessed. COBS 3.5.4 does not apply therefore it is 'the client' against whom the assessment is made.



COBS 3.2 defines a client as

*A person to whom a firm provides, intends to provide or has provided:
a service in the course of carrying on a regulated activity; or
in the case of MiFID or equivalent third country business, an ancillary service.*

The Handbook Glossary defines a person as:

(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).

A local authority is a corporate body therefore the above would lead to the conclusion that the assessment in (c) should be against that body corporate.

However the wording of (c) does not comfortably fit with that conclusion as it reads as if the firm should be assessing an individual. Although a local authority as a body corporate can possess knowledge of the transactions or services envisaged how can it work in the financial sector for at least one year in a professional position?

Question 17: Do you agree with our approach to extend these proposals to Non-MiFID scope business? If not, please give reasons why.

As outlined in the rest of this response, we believe the proposed approach to the implementation needs to be rethought before any consideration can be given to extending proposals to non-MiFID scope business. Since we believe the current proposals to be flawed, we cannot see any advantage in extending them.

Yours faithfully

A handwritten signature in black ink that reads 'P Wallach'.

Peter Wallach

Director of Pensions