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24 August 2018

Dear Peter,

RE: Investment Consultants Market Investigation – Provisional Decision Report

The Investment Association[1] welcomes the opportunity to comment on the CMA's Provisional Decision Report.

Investment consultants play a central role in the UK pensions market and the quality of their advice is a key determinant of outcomes for pension schemes. Within the UK pensions market, fiduciary management offers an alternative governance model for pension fund trustees that is growing in prominence.

Ensuring that these elements of the investment value chain work well for pension schemes and their members is critical. In particular, we support measures that are designed to level the competitive playing field between providers, to the benefit of pension schemes.

[1] The Investment Association is the trade body that represents UK investment managers, whose 240 members collectively manage over £6.9 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 36% of European assets.

More information can be viewed on our website.

Common standards around performance and fee disclosures will help both consumers and the industry.

We respond in detail on all the remedies below. There are six key messages in our response:

1. Mandatory tendering (Remedies 1-3). Given the CMA's findings on the incumbency advantage enjoyed by Investment Consulting-Fiduciary Management (IC-FM) firms with existing advisory clients, we consider mandatory warnings by IC-FM firms when selling fiduciary management, and mandatory tendering on the first adoption of fiduciary management, as minimum requirements to address the issue. Subject to a suitable definition of fiduciary management to which the remedy applies, and further clarity over what is meant by 'open' and 'closed' tenders, a well-designed tender process that does not impose significant cost and complexity on pension schemes should improve competition in the market by ensuring that trustees consider a wide range of providers.

2. Fee disclosures (Remedies 4-5 and supporting remedy C). The asset management industry is highly supportive of enhanced disclosure of the charges and costs of the investment process to clients, which includes fees and transaction costs on a disaggregated basis. This reporting should extend to fiduciary management services. As we have previously indicated[2], MiFID II already provides for granular disclosure of all costs and charges relating to services provided by MiFID-regulated investment firms. Application of these same standards across the fiduciary management industry, as well as an additional requirement to unbundle fiduciary management fees from underlying asset management fees and transaction costs, will enhance the accountability of the fiduciary management industry to its clients. By building on existing regulatory requirements the remedy will avoid imposing additional and duplicative reporting on the market. The templates developed by the Institutional Disclosure Working Group (IDWG) will provide an additional detailed reporting framework across the market.

3. Fiduciary management performance standards (Remedy 6). The IA supports the development of a standardised approach to reporting the past performance of fiduciary management services to prospective clients. Such standards will enhance client information and overall confidence. In terms of delivery, we do not agree that a new group to implement and maintain fiduciary management performance standards is necessary. Instead, we reiterate our strong support for the work of IC Select in this area, along with its forthcoming incorporation into the CFA's Global Investment Performance Standards (GIPS), as the best way forward for a client-focused outcome. The development of the standard with the input of the large majority of UK fiduciary managers, as well as the precedents for voluntary standards becoming a de facto requirement in the institutional asset management market, suggest that the IC Select standards can help the CMA meet its aims in an efficient and proportionate way.

4. The setting of strategic objectives for investment consultants (Remedy 7). Requiring trustees to set objectives for reviewing the performance of their investment consultants is key to ensuring both the accountability of the consultant, and helping to drive good

[2] IA response to CMA working paper on information on fees and quality. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_paper_on_fees_and_quality.pdf

outcomes for pension scheme members. The fact that not all schemes have strategic objectives against which their investment consultants are measured is indicative of the significant concerns identified by the CMA with respect to governance and the degree of engagement, particularly at DC pension schemes[3]. This is a longstanding theme, where The Pensions Regulator and FCA have also expressed views[4]. The IA supports a strong emphasis on investment governance and has identified the setting of member-focused investment objectives, the identification of investment budgets and a greater emphasis on the measurement of performance as key features of good investment governance that DC schemes should be performing[5]. Given the growing importance of DC provision for future retirement savings in the UK, this is an area that is critical for successful long-term delivery.

5. Basic standards for recommended asset management products (Remedy 8). Standardised reporting of investment performance is an important objective, reflected in several decades of work by the asset management industry worldwide on GIPS. By standardising the calculation and presentation of investment performance, GIPS offers investors the ability to compare different managers and products on a like-for-like basis over time and is now a global norm for reporting. In our view, the remedy should not be to impose a new set of standards on consultants but rather to require the presentation of GIPS-compliant performance figures for their recommended products, which can be sourced from the relevant asset managers whose products are being rated. Pension scheme trustees could also be encouraged – via the TPR guidance that the CMA is proposing – to request GIPS-compliant performance data for consultants' recommended products.

6. Extending the FCA's regulatory perimeter (Supporting remedy A). The FCA's regulatory perimeter should be extended to include those areas of investment consulting activity that are not already FCA-regulated. This will allow the FCA to set clear conduct rules for the investment consulting sector. Alongside this, although parts of the fiduciary management service are FCA-regulated, the service in its entirety is not. Appropriate definitions that allow the CMA's remedies to be applied in a targeted fashion would be helpful in both cases. The CMA's current definitions are too broad and could be interpreted as including wider areas of asset management activity and firms (notably OPS firms[6]), inadvertently bringing them into the scope of the proposed remedies. For both investment consulting and fiduciary management, we therefore propose definitions that are focused more tightly around both the investment advice given to pension scheme trustees as well as its implementation. This should ensure that wider asset management activity and firms are not unintentionally brought within the scope of the CMA's remedies.

In addition to these six points, covered in more detail in our response below, we suggest that further analysis is needed around the management of conflicts of interest in relation to the recommendation by investment consultants of their in-house products over those of competing external providers. Whilst the CMA has devoted a significant amount of its analysis to fiduciary management services, and has also considered the same conflict in the

[3] See pages 139-141 of the Provisional Decision Report.

[4] Asset Management Market Study, Interim and Final Reports, FCA, 2016-17.

[5] IA position paper: Putting investment at the heart of DC pensions, 2018. Available to download at https://www.theinvestmentassociation.org/assets//files/Pensions_report_online_version_FINAL.pdf

[6] OPS firms are the FCA-regulated in-house asset management arms of occupational pension schemes. They manage money only for their parent.

DC master trust market[7], we note that there is no analysis of institutional market dynamics presented outside of these two key areas (either in DB or DC).[8] It would be helpful to see further detail of market-wide CMA analysis in the final report.

I hope this response is helpful and I would be delighted to discuss it with you further.

Yours faithfully,

Imran Razvi

Public Policy Adviser

[7] In paragraph 8.114 of the Provisional Decision Report, the CMA concludes that it is unlikely that the potential conflict of interest faced by IC firms offering master trusts and acting as EBCs is leading to a competition problem at present, on the grounds that the market penetration of consultant master trusts is low. We suggest this issue is kept under review as the potential conflict may create a competition issue in future if the consultants' share of the master trust market grows significantly.

[8] IA response to the CMA Issues Statement, 2017. See paragraph 45. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_issues_statement_121017_4.pdf

INVESTMENT ASSOCIATION RESPONSE TO THE CMA PROVISIONAL DECISION REPORT REMEDIES

REMEDY 1: MANDATORY TENDERING ON FIRST ADOPTION OF FIDUCIARY MANAGEMENT

1. The combination of the CMA findings that IC-FM firms may steer advisory clients towards their own fiduciary management service and that trustees display low levels of engagement when first moving into fiduciary management, highlight the need for robust mechanisms for the management of potentially significant conflicts of interest in this area.

2. The IA agrees with the CMA that these conflicts are not always managed as well as they might be. We note the finding in Figure 8 of the Provisional Decision Report that the three largest investment consultancy firms have steadily increased their share of the fiduciary management market since 2007, despite the existence of a number of other players active in this market. The three largest investment consulting firms have a combined 40-52% share in the revenue of the fiduciary management market[9].

3. The CMA's findings constitute clear evidence of the advantage enjoyed by IC-FM firms acting as incumbent advisers. This advantage is built up over the course of an advisory relationship as the consultant gains an understanding of a client's specific objectives and needs.

4. As we stated in our response[10] to the CMA's Issues Statement, we do not see any inherent problem with vertical integration in the fiduciary management market as long as appropriate conditions are in place. First, that clients understand the different nature of the relationship in the move from adviser to fiduciary, and are aware of the option to look across the market for a fiduciary manager. Secondly, there need to be mechanisms to ensure that a proper market search and appointment process takes place.

5. We recognise that there are no easy solutions to this problem and that structural remedies, though effective in addressing the conflict, may create adverse outcomes for customers in other ways[11]. In light of the incumbency advantage, requiring trustees to tender on the first adoption of fiduciary management would be the minimum requirement for addressing this issue. As long as the tendering process is well designed, such a requirement should improve competition in the market by ensuring that trustees consider a wider range of providers. We have a number of further views on the tendering process that we set out below.

6. In designing a tender process and associated guidance, the CMA and TPR will need to ensure that the process works so as to enhance competition but not result in excessive

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[9] Provisional Decision Report, paragraph 4.102.

[10] See paragraphs 42 and 43 of the IA response to the CMA Statement of Issues. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_issues_statement_121017_4.pdf

[11] As discussed in in paragraphs 12.160 – 12.169 of the Provisional Decision Report.

complexities and costs for pension schemes. For those schemes that may benefit from adopting fiduciary management, the cost of running a tendering process should not come to be viewed as a barrier – and therefore a dis-incentive – to adoption of the service.

7. In this context, we would also highlight the need to define fiduciary management appropriately for the application of mandatory tendering and other remedies. We discuss this in more detail later in our response (in our comments on supporting remedy A), but note here as well that a broad definition could inadvertently bring other asset management activities and services into the scope of mandatory tendering, leading to significant additional and unnecessary costs for pension schemes when procuring those services.

Open vs closed tendering

8. Further clarity is required as to what is meant by 'open' and 'closed' tendering as this could affect what the CMA decides to do in this area. We have interpreted an open tender to be one where trustees invite any provider in the market to submit a proposal before making a decision on which provider to choose. We understand a closed tender to involve a smaller group of pre-selected providers being invited to formally submit RFPs for a mandate.

9. Defined in this way, trustees would ideally run an open tender process as this would give them the greatest choice of provider and ensure competition works to the scheme's benefit. However, we recognise tendering processes could be both costly and time consuming for pension schemes and so there should be scope for closed tendering as described above. Trustees could choose to involve a third party evaluator (TPE) or other independent party to help draw up a short list of firms invited to tender.

10. In our view it is crucial that any restricted list is produced from a whole-of-market starting point, since this will ensure that trustees have at least given some consideration to all providers across the market. Furthermore, there should be a minimum of three firms required to be on the shortlist, thus ensuring that trustees have a number of competing firms to choose from. All this remains subject to clear definitions of what would constitute an 'open' and 'closed' tender.

Prohibition on suppliers accepting a first time fiduciary management mandate without tendering

11. We do not have any concerns with fiduciary managers being prohibited from accepting a first time mandate if it has not been competitively tendered for. However, we would note that the prohibition will be superfluous as long as trustees conduct the required tender. This prohibition could be viewed as a useful complement only when trustees do not comply with their mandatory tendering obligation, which in itself should be a very rare occurrence.

12. With regards to compliance with the mandatory tendering requirement we think this is best done by trustees reporting their adherence to the Pensions Regulator if required to

and as appropriate. Documentation showing the process gone through in making an appointment could be submitted if the regulator required it.

Minimum thresholds for tendering

13. We agree with the CMA that there should not be a minimum threshold below which schemes would not have to tender on first time adoption of fiduciary management. The CMA's evidence has shown that smaller schemes are the least able and engaged on investment matters and scrutiny of their suppliers and that they are therefore at highest risk of suffering detriment in terms of higher prices and reduced service quality. Smaller schemes would benefit most from a mandatory tendering requirement and it would be inconsistent with the CMA's own evidence to exclude them from this remedy.

14. However, the need to keep tendering costs reasonable is particularly important for smaller, less well-resourced schemes and this is why we believe that the CMA should consider permitting the use of well-run closed tendering processes in the manner described above.

No requirement to tender for expansion in the scope of fiduciary management

15. We think the CMA should consider extending the mandatory tendering remedy to cover increases in the scope of fiduciary management when moving from 'partial' to 'full' FM for the first time. This is because 'partial' fiduciary management is in practice essentially the same service as segregated portfolio management. Moving from such a situation to a full fiduciary management mandate would be akin to a first time move into FM and so should be tendered for.

Mandatory tendering for existing fiduciary management mandates

16. We agree that schemes that have not previously tendered for their fiduciary management provider should be required to tender for the mandate in future. Trustees that have not gone out and assessed a wider group of providers could be missing out on a better provider and/or a lower cost service.

17. If the number of schemes in this position were very small, then a case could be made for not imposing this requirement on trustees. On the contrary, the fact that the CMA has identified 327 schemes[12] which, as of 2016, used the service but did not hold a tender process, means that a significant number of schemes could benefit from tendering for a new provider.

18. With regards to this group of schemes we think our comments on open vs closed tenders in paragraphs 8-10 are equally applicable here. With respect to the qualifying criteria for a previous competitive tender process that would exempt trustees from holding an additional process, in our view, the requirement should be that the trustees assessed more than one provider's formal tender for the service.

[12] Addendum to the Provisional Decision Report.

19. As concerns the maximum permissible tenure without holding a tender process, five years seems sufficient. Pension schemes will be better placed to comment upon appropriate grace periods for schemes that have already reached the maximum permissible tenure.

REMEDY 2: MANDATORY WARNINGS WHEN SELLING FIDUCIARY MANAGEMENT SERVICES

20. We agree with the proposed remedy requiring IC-FM firms to provide advisory clients with warnings when the firm's written material relates to fiduciary management. This should ensure that trustees are fully aware when the firm is referring to its own service as well as the fact that alternative providers are available. A reference in these warnings to the obligation on trustees to carry out mandatory tendering on first adoption of fiduciary management would also be a helpful complement to remedy 1.

21. While we fully agree that warnings should be used in the cases outlined in points (b) – (d) of paragraph 12.43 of the provisional decision report[13], it is less clear that a mandatory warning should be required when the client is receiving advice on fiduciary management in general. Where the adviser believes that it may be in the client's best interest to adopt fiduciary management and advises them accordingly, a warning may put trustees off adopting the service if they believe that the advice is only being given so that the adviser can sell them the additional service.

22. With regard to application of the remedy we agree that it should only apply to IC-FM firms. The remedy is designed to ensure that the incumbency advantage of being the scheme's adviser is lessened and accordingly needs only to apply to IC-FM firms. Specialist fiduciary managers and asset management fiduciary managers (AM-FM firms) do not face this conflict because they would only ever be appointed following a tender process.

REMEDY 3: ENHANCED TRUSTEE GUIDANCE ON COMPETITIVE TENDER PROCESSES

23. We support the recommendation that TPR should provide further guidance for trustees on running competitive tender processes. As the CMA have found variation in the quality of tendering processes undertaken to date, we consider that some trustees would benefit from guidance that TPR would provide. Alongside this TPR might consider developing a standard template for tendering (which can be enhanced by trustees as required) to help with the process. If the template and guidance were designed appropriately they should lead to an overall rise in the quality of tenders by setting out a minimum set of requirements that would need to be fulfilled.

24. In order to really help trustees in their decision making, TPR should be quite specific in its guidance. For example: encouraging trustees to consider all providers in the market;

[13] For convenience we reproduce here these cases: (b) When mentioning or providing information on their own fiduciary management service; (c) When advising on the suitability of their own fiduciary management service; (d) In advance of trustees entering into a binding agreement with the firm to be provided with fiduciary management services.

providing a view on the minimum number of providers that trustees should consider (assuming the CMA doesn't already specify this in its order); and setting out the factors trustees that should take into account when considering the use of TPEs.

REMEDY 4: REQUIREMENT ON FIRMS TO REPORT DISAGGREGATED FIDUCIARY MANAGEMENT FEES TO EXISTING CUSTOMERS

Applying MiFID II-style cost and charge disclosure requirements to fiduciary management

25. The asset management industry is highly supportive of enhanced disclosure of all the charges and costs of the investment process to clients. Significant action has already been taken by the industry in order to meet the new and comprehensive requirements under MiFID II, PRIIPs, and COBS 19.8[14]. The IA, on behalf of its members, has actively supported and helped shape non-regulatory initiatives such as the LGPS Code of Transparency and the IDWG templates.

26. Accordingly, we would welcome a remedy that requires fiduciary managers to report all fees and transaction costs on a disaggregated basis to existing clients. As we set out in detail in our response[15] to the CMA's working paper on information on fees and quality, MiFID II already provides for highly granular disclosure of all the costs and charges of asset management services provided by MiFID-regulated investment firms[16] and we called for the same standards to be applied across the fiduciary management industry.

27. We noted in our response to the working paper that while fiduciary management as a service in its totality is not covered by MiFID II, elements of it are. For asset management firms that are regulated under it, the MiFID requirements provide an overarching framework for cost and charge disclosure to fiduciary management clients. Accordingly, AM-FM firms are already applying MiFID II disclosure to fiduciary management clients. The asset management industry is strongly supportive of a remedy that would extend this disclosure standard across the UK fiduciary management market.

28. While the MiFID II requirement is for costs and charges to be presented on an aggregated basis with a disaggregation provided only on request by the client, we note that AM-FM firms typically already provide disaggregated disclosures, with the fiduciary manager's fee shown separately from the management fees on the underlying asset management products, as well as the transaction costs incurred in the investment of client monies.

29. In this regard the CMA's proposal to require a disaggregated breakdown goes further than MiFID II by making this mandatory for fiduciary management fees, rather than in

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[14] COBS 19.8 puts an obligation on asset managers to disclose charges and transaction costs to DC workplace pension schemes.

[15] IA response to CMA working paper on information on fees and quality, 2018. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_paper_on_fees_and_quality.pdf

[16] As discussed in our response to the CMA working paper on information on fees and quality, the Insurance Distribution Directive (IDD), applicable from 1 October 2018, will mirror MiFID II cost and charge disclosure requirements for Insurance-Based Investment Products. Some AM-FM firms use insured funds to service FM clients and these firms are already providing MiFID II style disclosure to these clients.

response to a request by the client. We support this additional requirement for fiduciary management fees because the client should be able to understand the itemised costs of the entire elements of the fiduciary management service.

30. Crucially, it also allows for a separation of transaction costs from management fees. The management fee (payable both to the fiduciary manager and any underlying asset managers) reflects the fee paid for the service delivered. Transaction costs reflect the costs incurred in delivering a return for clients and these costs accrue to governments (via transaction taxes) and the 'sell-side' of the capital markets – exchanges, brokers and investment banks.

31. Transaction cost disclosure is a crucial part of fiduciary/asset manager accountability in measuring how performance has been delivered, but aggregating them with management fees reduces this accountability and provides a misleading view for the client on the cost of the service. We therefore strongly support the disaggregation of transaction costs from management fees.

32. With regard to the frequency of reporting, MiFID II requires ex-post disclosure on at least an annual basis. Clients can request information more frequently if they require it. We think a similar requirement for the CMA's remedy is sufficient and would also avoid the risk of different regulatory requirements for different clients.

The role of the IDWG templates

33. MiFID II specifies the minimum legal requirements for asset management charge and transaction cost disclosure. The IDWG templates provide a further analysis of a pension scheme's costs and charges (including some of its non-investment costs) for those clients that want it.

34. Significant work has gone into developing the IDWG templates and we consider that they should be sufficient as a reporting mechanism for asset management fee disclosure. We will be engaging closely in the next phase of implementation as a new Group is set up to deliver the new framework.

35. The CMA will be aware that firms are already required to comply with MiFID II and COBS 19.8 and are providing disclosures in line with those rules. The IDWG templates, once released, will be another mechanism for reporting that clients and managers can make use of if clients choose. The templates will also be suitable for the reporting of disaggregated fiduciary management and asset management fees and transaction costs, as per the CMA's proposed remedy. Accordingly, we do not see the need for any further templates in this area.

REMEDY 5: MINIMUM REQUIREMENTS ON FIRMS FOR FEE DISCLOSURE WHEN SELLING FIDUCIARY MANAGEMENT

36. As with ex-post disclosure, we support the ex-ante disaggregated charge and cost disclosure requirements that the CMA proposes imposing on fiduciary managers. These are consistent with MiFID II and a standard disclosure requirement – including an estimation of the transaction costs likely to be incurred in investing the client's assets –

across the fiduciary management market will aid clients. Those firms subject to MiFID II disclosure obligations will already be compliant with the CMA's proposal.

37. With regard to the list of fees and costs that would need to be disclosed on an ex-ante basis under this remedy, we consider that the CMA's list on p289 of the Provisional Decision Report is comprehensive.

REMEDY 6: STANDARDISED METHODOLOGY AND TEMPLATE FOR REPORTING PAST PERFORMANCE OF FIDUCIARY MANAGEMENT SERVICES TO PROSPECTIVE CLIENTS

38. The IA fully agrees with the need for a standardised approach to reporting the past performance of fiduciary management services to prospective clients. Such standards are good for clients and the reputation of the industry. However, we do not believe that the CMA's proposal for a new group to implement and maintain fiduciary management performance standards is the best way forward.

39. Our responses to the CMA's issues statement as well as its working paper on information on fees and quality outlined our support both for the work done by IC Select in this area and the agreement reached with the CFA Institute for the latter to integrate this standard into its Global Investment Performance Standards (GIPS) by 2020. This is particularly significant and we return to this point later in relation to remedy 8, when we discuss GIPS in further detail.

40. We reiterate our support for the IC Select work, while noting that the CMA is not sure whether this is the best approach and that a voluntary standard will not deliver the outcome it seeks. We address both points below.

Is the IC Select standard the best approach?

41. The IC Select fiduciary management performance standard has been in development for a number of years and is backed by fourteen fiduciary managers[17], who also contributed to this work. These include fiduciary managers from across the market, including both IC-FM and AM-FM firms that already represent a very substantial proportion of the market. Developing standards in an area as complex as fiduciary management involves reconciling multiple views and the process is inevitably iterative.

42. Discussions that we have held with AM-FM firms within our membership highlight the fact that the standard has been in most part agreed with only a number of minor points of detail outstanding, which are expected to be settled by the time the standard transfers to the CFA Institute. The assessment of these firms is that these standards are expected to provide prospective clients with the information needed to be able to compare the performance of different fiduciary managers on a standardised basis.

[17] A full list of the providers backing the standard can be found in an IC Select document setting out the guidelines for the standard. Available to download at https://www.ic-select.co.uk/images/documents/IC-Selelct-FM-Performance-Standard-Overview-April-2018.pdf

There is a strong desire on the part of AM-FM firms to adopt the IC Select standards as soon as possible.

43. Given this extensive and highly inclusive development process[18], the central involvement of an independent party and intended GIPS incorporation, it is not clear what a new implementation group could deliver over and above the IC Select standards. On the provider side, given the contribution to date of the majority of fiduciary management firms, we do not see how a new implementation group would look particularly different in composition to the group that has already contributed to the development of the IC Select standard. It follows that any technical discussions on the content of a standard would likely follow a similar course. It would be unnecessarily costly to those involved in the development of the standards if, having sought to raise standards from within the industry, a regulatory process required the duplication of efforts. While we note that the time of the people involved is the main cost for firms, this should not be seen as trivial. Further, requiring a new implementation group to develop a new standard would reduce the incentives of IC Select or similar firms to develop other such standards in the future if regulatory intervention prevents their use.

Is a voluntary standard sufficient?

44. We understand that the CMA is concerned that the voluntary nature of the IC Select standard will not achieve the desired outcome. We do not share this view, because we believe that market pressure, combined with regulatory signalling, will put pressure on fiduciary managers to turn voluntary compliance into a de facto requirement.

45. We have seen market expectations have a significant impact in two areas of the institutional asset management industry:

- Local Government Pension Scheme (LGPS) Code of Transparency: This initiative is a voluntary code put in place by the Local Government Pension Scheme Advisory Board for the disclosure of all investment charges and costs paid by LGPS clients. The reputational risk of non-compliance and the fact that adherence to the code is expected to be incorporated into future RFPs together provide asset managers with a strong commercial incentive to sign up to the code. As of August 2018, 83 managers, responsible for managing around 70% of LGPS assets have signed up to the Code[19]. This is a significant level of take-up in a short space of time[20] when firms have also been contending with uncertainty over the status of the current LGPS cost disclosure template relative to the new IDWG framework.

- Compliance with GIPS: This is not mandatory but as the FCA noted in its Asset Management Market Study Interim Report[21] *"asset managers are under significant commercial pressure to confirm their compliance with GIPS standards"*. The CFA Institute reported that, in 2016, 86% of firms that submitted a GIPS claim of

[18] Of the seventeen firms that the CMA has highlighted in Figure 1 of the Provisional Decision Report as offering fiduciary management in the UK, fourteen have backed the IC Select standard.
[19] We thank the LGPS Advisory Board for providing us with this information.
[20] The code launched in the spring of 2017.
[21] FCA Asset Management Market Study Interim Report, 2016. See paragraph 8.162. Available to download at https://www.fca.org.uk/sites/default/files/publications/market-studies/ms15-2-2-interim-report.pdf

compliance to it also underwent third party verification[22]. GIPS-compliant performance numbers are often used by asset managers when responding to RFPs. We discuss this issue further below in our comments on remedy 8.

46. We think that these examples demonstrate the power of voluntary standards to drive compliance by suppliers. The LGPS example is a particularly powerful one because the pressure is coming directly from pension schemes. In this context, we note that the IDWG has recommended[23] to the FCA that the regulator should not immediately seek to mandate use of its templates, instead relying on demand side pressure to encourage asset managers to complete the templates. We agree with this approach.

47. In light of these examples, we would encourage the CMA to reconsider the question of whether a voluntary solution could achieve the CMA's goals. With the majority of the fiduciary management industry signed up to the standards we think further pressure on the part of clients to ensure compliance will lead to all fiduciary managers using the standard. Incorporation into GIPS will further strengthen the recognition of the standards, given GIPS' global brand.

Next steps

48. Rather than set up a new implementation group we recommend that the CMA and TPR work closely with IC Select and the CFA Institute to develop a deeper understanding of the existing standard, its development to date, the process for its incorporation into GIPS from 2020 and the governance that would sit around its future evolution.

REMEDY 7: DUTY ON TRUSTEES TO SET THEIR INVESTMENT CONSULTANTS STRATEGIC OBJECTIVES

49. The fact that not all schemes have strategic objectives against which their investment consultants are measured is indicative of the governance concerns that the CMA has found with some pension schemes, particularly amongst smaller schemes and in the DC market.

50. We strongly support the requirement for trustees to set objectives for reviewing the performance of their investment consultant. This is key to ensuring both the accountability of the investment consultant and helping to drive good outcomes for pension schemes and their members.

51. Those schemes that already set and monitor such objectives and their consultant's performance against them will be unaffected. But the remedy should have the effect of improving governance standards at those schemes that do not currently have such objectives.

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[22] See the CFA blog 'Out of Top 100 Asset Management Firms Globally, 85 Claim GIPS Compliance', 6 February 2017. Available to read at https://blogs.cfainstitute.org/marketintegrity/2017/02/06/out-of-top-100-asset-management-firms-globally-85-claim-gips-compliance/

[23] IDWG report to FCA: Summary, June 2018. See recommendation 5. Available to download at https://www.fca.org.uk/publication/documents/summary-idwg-recommendations.pdf

52. Accordingly we do not think that there should be a minimum threshold below which schemes are exempted from setting such objectives. Given the engagement and governance issues that the CMA has identified with smaller schemes, it would be inconsistent to exempt them from the setting of basic strategic objectives.

53. A review and agreement of objectives every three years seems sensible and could coincide for DB schemes with the triennial valuation cycle, and for DC schemes with periodic reviews of the scheme's Statement of Investment Principles, which must be reviewed at least every three years and whenever there has been a significant change in investment policy.

54. The CMA's own evidence in chapter 6 of the Provisional Decision Report highlights that there is a range of abilities amongst trustees in relation to scheme investment, with some trustees not having the required skills to set such objectives. Simply giving them a duty to set objectives may on its own not be enough, and could result in vague objectives that do not meet the intention of increasing the accountability of investment consultants to trustees. In that regard, guidance from TPR covering the setting of the objectives is essential. As part of a wider move to increase professionalisation amongst trustees the CMA could further recommend that TPR or the industry move toward developing a formal training/accreditation framework for those trustees taking investment decisions.

REMEDY 8: ESTABLISH BASIC STANDARDS FOR HOW INVESTMENT CONSULTANTS AND FIDUCIARY MANAGERS REPORT PERFORMANCE OF RECOMMENDED ASSET MANAGEMENT 'PRODUCTS' AND 'FUNDS'

Recommended products and the importance of GIPS

55. We agree that standardised reporting of asset management product performance (recommended or not) is a good thing but we are somewhat surprised by the CMA's remedy in this area in relation to establishing new standards (which we disagree with) rather than requiring disclosure of existing standards (which we recommend). The issues that the CMA identified as being present in investment consultant disclosures in this area have already been dealt with in the asset management industry through the widespread adoption of GIPS[24]. Standards of the type identified by the CMA already exist within the asset management industry. We would describe them as going well beyond what might be regarded as basic, addressing some challenging technical areas for managers internationally.

56. GIPS provides clients with standardised performance information. Guidelines on the use of composites[25] aim to improve transparency by eliminating survivorship biases, misrepresentations and historical data omissions. Clients understand that GIPS is an

[24] The current edition of the standards can be downloaded at https://www.cfainstitute.org/-/media/documents/code/gips/gips-standards-2010.ashx

[25] A composite is an aggregation of one or more portfolios managed according to a similar investment mandate, objective, or strategy and is the primary vehicle for presenting performance information to prospective clients.

industry standard, and that in making a compliance claim with GIPS the investment manager is publicly saying that they comply with all the provisions of the standards.

57. By standardising the calculation and presentation of investment performance, GIPS offers investors the ability to compare different managers and products on a like-for-like basis over time, free of any favourable presentation of the data. Firms' performance histories must comply with the requirements of GIPS in order to claim GIPS compliance.

58. An investment manager may further choose to have their claim of compliance with GIPS verified by a third party firm. Verification involves the review of a firm's performance measurement processes and procedures to assess whether these are designed to calculate and present performance in compliance with GIPS. As noted above in paragraph 45, in 2016 86% of firms that submitted a GIPS claim of compliance to the CFA Institute also underwent third party verification.

59. We note that the FCA specifically highlighted the role of GIPS in standardising performance and allaying concerns over cherry-picking by way of contrast to the lack of an equivalent performance standard for investment consultants:

"We think the challenges identified in monitoring investment consultant performance can be overcome. Before the creation of the Global Investment Performance Standards (GIPS) for asset managers, there were concerns around managers cherry-picking best-performing funds, or comparing funds where the risk profile of the funds was not comparable. After GIPS, asset managers are under significant commercial pressure to confirm their compliance with GIPS standards. To comply they must present performance information to clients on a composite basis using a standardised format, rather than by offering data on a single fund which shows the performance of the manager in a favourable light. So there is precedent for successfully implementing industry initiatives which improve transparency and reporting".[26]

60. Where asset managers are GIPS-compliant, they generally provide investment consultants with GIPS-compliant data alongside other data requests that consultants make from them. Managers also use GIPS-compliant data in response to RFPs and at client pitches. However, for the purposes of consultants' recommended products the asset manager is not in control of what is presented to the client by the consultant.

61. Our interpretation of the CMA's findings in this area is that it may be that GIPS-compliant data is not always presented to clients when investment consultants and fiduciary managers provide pension schemes with performance data on their recommended products.

62. In our view the remedy is not to impose a new set of standards on consultants and fiduciary managers but rather to require them to present GIPS-compliant performance figures for their recommended products. This data would be sourced from the asset manager(s) whose product is being rated. Pension scheme trustees could also be

[26] FCA Asset Management Market Study Interim Report, 2016, Paragraph 8.162.

encouraged – via the TPR guidance that the CMA is proposing – to request GIPS-compliant performance data for consultants' recommended products.

Gross vs. net-of-fees reporting

63. Historically, institutional asset managers reported performance on a gross-of-fees[27] basis since it was the only way for clients to assess performance on a consistent basis. In a market where fees are negotiated on a client-by-client basis, a net-of-fees presentation could be misleading if the fee rates faced by a particular client differ from those used to calculate the net return. Increasingly though, net-of-fees performance for each individual client is also being reported.

64. To show a *prospective* client net-of-fees performance is challenging when part of the pre-sale process involves the negotiation of fees. A more pragmatic solution would be to present a range showing gross performance and net performance at the 'rack rate' fee level, prior to any fee negotiations having taken place. This would then provide a maximum range for performance which could be used to compare products on a net-of-fees basis.

Use of benchmarks

65. One of the areas the CMA proposes requiring to be included in the reporting standards is excess return over a benchmark. Specifically, the CMA states that *"returns should be compared to an appropriate benchmark, and the benchmark should be clearly stated"*[28]. We draw clear parallels between this proposal and the draft rules on which the FCA is now consulting in the context of the Asset Management Market Study that relate to asset managers' retail business. Specifically, as part of Consultation Paper CP18/9[29], the FCA brought forward proposals around the reporting of fund performance and clarity around the use of benchmarks, which the FCA categorised into target, constraining and comparator benchmarks.

66. The IA agrees that the reporting of performance, in both the retail and the institutional markets, should be clear and that appropriate comparators should normally be used. We would caution against a narrow definition of investment management, and particularly active management that would assess delivery only in terms of a performance relative to a pre-determined index. This is not always the case in the fund market where funds can be unconstrained or target a specific outcome that does not involve an index. Clarity of investment objective and strategy is essential, but a benchmark is not necessarily an objective.

67. This is even more pertinent in the segregated institutional market where arrangements are bespoke and tailored to each client. The investment objectives go far beyond achieving returns relative to an index to include liability hedging, risk management etc. Specifically for DB pensions, the primary objective is in relation to improving and

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[27] For the avoidance of doubt 'Gross-of-fees' is defined as the return on investments net of transaction costs but before the management fee is deducted.
[28] Paragraph 12.131 (a) of the Provisional Decision Report.
[29] CP18/9: Consultation on further remedies – Asset Management Market Study, FCA, 2018.

maintaining funding levels and liability driven investment (LDI) has grown significantly in recent years.

68. That is not to argue against a standardised performance reporting framework. Rather, we suggest that such a framework would benefit from viewing performance as delivery against a given objective rather than benchmark out-performance. Within this, where a benchmark is relevant, then this should be clearly stated and performance reported appropriately.

CMA SUPPORTING REMEDIES

RECOMMENDATION A: EXTENSION OF FCA REGULATORY PERIMETER

69. We have previously set out our view[30] that the FCA's regulatory perimeter should in time be extended to include those areas of investment consulting activity that are not already FCA-regulated. We remain supportive of the CMA's proposal to recommend to government that this goes ahead as it will allow the FCA to set clear conduct rules for the investment consulting sector and monitor firms' behaviour against those rules.

70. As outlined in our response to the CMA working paper on information on fees and quality[31], while elements of the fiduciary management service are already regulated (investment implementation) the advice element may not always be[32]. For AM-FM firms that are already MiFID-regulated, MiFID provides an overarching regulatory framework in which to operate in relation to the provision of the entire fiduciary management service. Nonetheless given that not all fiduciary management firms will be regulated in the same way, a consistent definition of the service that applies to all providers is welcome. Once the FCA regulatory perimeter is extended, the remedies proposed by the CMA should apply in relation to this definition.

71. We recognise that it will be for the Government to take forward the recommendation and to draft appropriate legislation, subject to an appropriate consultation process. Nonetheless, we set out some initial thoughts below on the issues that should be considered in this area.

The definition of investment consultancy

72. At a minimum, we consider the activities of asset allocation and manager selection to be core activities of investment consultancy that should be part of the FCA's regulatory perimeter.

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[30] See the IA response to the FCA Asset Management Market Study Interim Report, 2017. Available to download at https://www.theinvestmentassociation.org/assets/files/consultations/2017/IA_response_to_FCA_Market_Study_Interim_Report.pdf
See also the IA response to the CMA's Issues Statement, 2017. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_issues_statement_121017_4.pdf

[31] IA response to CMA working paper on information on fees and quality. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_paper_on_fees_and_quality.pdf

[32] Specifically anything that is not a product recommendation i.e. asset allocation or manager selection.

73. In addition, we think the giving of advice by Employee Benefit Consultants (EBCs) to trustees and employers in the DC workplace pensions market in relation to the creation of the default investment strategy should be an FCA-regulated activity. DC default strategies are typically multi-manager and/or multi-asset solutions, with the EBCs creating their own default strategies by blending external managers' products. The advice provided here would seem to fall into the same category as more traditional institutional investment advice.

74. In recommending that asset allocation and manager selection advice provided by investment consultants become a regulated activity, we are mindful of the need to ensure that regulation is proportionate. Many conversations with institutional clients may involve broad discussions about financial instruments that do not constitute personal recommendations about particular investments. To treat all of the conversations and activities in the capital markets as regulated activities would be wholly disproportionate.

75. We note that throughout the work of the FCA and the CMA, pension schemes have been identified as the overwhelmingly dominant client group for investment consultants[33] and it is examination of their services to pension schemes that has formed the basis of the CMA's evidence. This offers the opportunity to frame a definition tightly around the role of investment consultants in providing advice to pension scheme trustees.

76. In particular it would be possible to frame a regulated activity based upon the fact that the advice is being given to pension fund trustees to meet their requirement to take advice under section 36 of the Pensions Act 1995, and other provisions that could be set out. Investment consultants and others who were giving advice in these circumstances would then be regulated.

77. For example, the regulated activity might be *"Advising trustees on the question of whether any investment is satisfactory having regard to the requirements of regulations under subsection 36(1) of the Pensions Act 1995, so far as relating to the suitability of investments, and to the principles contained in the statement under section 35."*

Defining fiduciary management

78. Similar comments apply in respect of fiduciary management where we think a highly specific definition of the service is required. In that regard we note that the formal definition proposed by the CMA for the purpose of application of its remedies[34] may be too broad:

    "Fiduciary management services means the provision of a service to institutional investors where the provider makes and executes decisions for the investor based on

[33] CMA Investment Consultants Market Investigation: Progress update, 2018. See paragraph 20 which notes that other institutional investors represent just 6.5% of investment consultant revenues and 9.1% of the assets on which they advise. Available to download at https://assets.publishing.service.gov.uk/media/5a8d44a540f0b641bc1835ef/investment-consultants-market-investigation.pdf

[34] As noted in paragraph 13.2 of the Provisional Decision Report, some remedies apply to investment consultants and fiduciary managers as defined in the glossary to the report.

the investor's investment strategy in the United Kingdom. This service may include responsibility for all or some of the investor's assets. This service may include, but is not limited to, responsibility for asset allocation and fund/manager selection."[35]

79. Our view is that this definition could capture broader elements of asset management activity outside the fiduciary management market. For example, the wording around making and executing decisions for the investor based on the investor's investment strategy could be deemed to include segregated portfolio management, which is an activity already regulated under both FSMA[36] and MiFID.

80. There are two characteristic features of the UK fiduciary management market that could help narrow the definition. The first of these relates to the legislative environment within which the UK fiduciary management market has developed i.e. the 1995 Pensions Act requirement on trustees to take investment advice. As set out in our response to the CMA working paper on information on fees and quality[37], UK fiduciary management can be broadly thought of as advice being given under the 1995 Pensions Act with implementation of that advice being done by the fiduciary manager. As with investment consultancy, a definition of fiduciary management framed in terms of the 1995 Pensions Act requirements could ensure the service is framed sufficiently for the purposes of the CMA remedies.

81. The second feature relates to what fiduciary management aims to achieve. The essence of full fiduciary management involves the fiduciary manager being responsible for investment advice *and* implementation in the context of the scheme's overall strategy. As discussed in paragraph 15 above, partial fiduciary management can look very similar to segregated portfolio management, but the provision of advice by the fiduciary manager *combined with* the implementation of that advice is the distinguishing characteristic of partial FM in comparison to segregated portfolio management.

82. Taking these two elements together, we would suggest that if the service is advice under the 1995 Pensions Act *and* implementation of that advice, then the activity is fiduciary management.

83. Accordingly, we would describe fiduciary management as the service carried out by an adviser appointed by trustees under section 36(3) of the 1995 Pensions Act, with responsibility for advice in relation to investment decisions. The service may include, but is not limited to, implementation of investment decisions and fund manager or portfolio manager selection.

84. Our proposals to identify fiduciary management for the purpose of regulating it as an activity are not intended to cut across any existing entitlements or responsibilities of trustees e.g. in relation to delegation under s34 of the 1995 Pensions Act.

85. This description captures both full and partial fiduciary management but the reference to the 1995 Pensions Act ensures that other areas of asset management activity are not

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[35] Glossary to the Provisional Decision Report.

[36] Financial Services and Markets Act 2000.

[37] See Figure 3 of the IA response to the working paper. Available to download at https://www.theinvestmentassociation.org/assets//files/IA_response_to_CMA_paper_on_fees_and_quality.pdf

covered. We emphasise that the wording in paragraph 83 is not intended as a recommendation for a formal legal definition of fiduciary management, but rather as a description that should be considered by the CMA in ensuring that its remedies are appropriately targeted.

Exempting OPS firms

86. OPS firms[38] are the in-house investment management arms of occupational pension schemes. They currently have their own FCA-regulated firm category, as a result of which, they owe clear regulatory obligations and protections to their sole clients, their respective pensions funds, in terms of suitability, inducements and conflicts of interest. They must also provide complete transparency over costs and charges incurred by them and in turn charged to their client.

87. We raise them here because OPS firms, depending on their individual operating model, act as advisers and/or fiduciary managers, undertaking and/or arranging investment management, and providing advice or decisions on asset allocation. These activities would fall within the CMA's current glossary definitions for both investment consulting and fiduciary management.

88. As non-commercial entities that do not provide these services to any client other than the pension scheme of the groups by which they are owned, they are not faced with the conflicts of interest identified by the CMA in its market investigation. We therefore call for OPS firms to be exempted from the CMA's remedies in order to avoid them being bound by rules that are not designed or intended to cover them. Since a definition of OPS firms exists in the FCA's COBS rulebook it should be straightforward to carve out OPS firms using that definition.

Implementing CMA remedies in the FCA rulebook

89. Our initial view is that once the FCA's regulatory perimeter has been extended, a simple transposition of the CMA remedies 1-2 and 4, 5 and 7 into the FCA's COBS rulebook would be sufficient subject to an appropriate definition of investment consulting and fiduciary management being in place. In terms of remedies 6 and 8, we think these will be best covered by the presentation of GIPS-compliant data. We understand from the CFA Institute that it has no concerns with a third party that has authority stating that firms must adopt a CFA Institute standard. Such a requirement could therefore enter into the FCA's rulebook.

RECOMMENDATION B: ENHANCED TRUSTEE GUIDANCE AND OVERSIGHT OF REMEDY 1

90. We support the CMA's proposal to recommend that TPR develop broader guidance for trustees on engaging with investment consultants and fiduciary managers. Such guidance could be very helpful for trustees in light of the governance challenges the

[38] A definition can be found in the FCA's glossary. https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=O

CMA has identified. If acted upon, this should help to raise governance standards amongst pension schemes.

91. The areas identified in paragraph 12.152 of the Provisional Decision Report are the right ones for such guidance to consider. Guidance around the setting of strategic objectives against which trustees can measure the performance of their investment consultants is particularly helpful in light of the CMA's findings that motivate remedy 7.

RECOMMENDATION C: IMPROVING INFORMATION ON UNDERLYING ASSET MANAGEMENT FEES AND PERFORMANCE

92. As we noted in our response to remedy 4, the asset management industry has done significant work to deliver cost and charge disclosure to its clients and the IDWG templates will be an additional way for pension scheme clients to be presented with information related to the costs of running their schemes (which as we noted above cover costs wider than investment). The IA will be fully engaged in the next phase of implementation as a new Group is set up to deliver the new framework.