CMA
Competition & Markets Authority

INVESTMENT CONSULTANTS MARKET INVESTIGATION

Summary of response hearing with XPS Pensions Group plc (XPS) held on 8 October 2018

Introduction

1. XPS said that they were aware that the CMA's findings in the Provisional Decision Report had been questioned by other parties, but XPS said that the behaviours outlined in the report reflects XPS' experience in the market, particularly the steering of Investment Consultant clients into those firms' Fiduciary Management services.

2. XPS said that they considered that the remedies suggested in the report were a reasonable response to the issues uncovered and would not be burdensome.

Definitions of Investment consultancy and fiduciary management

3. XPS said that their definitions would be that an Investment Consultant provides independent investment advice but does not sell products; Fiduciary Managers provide Investment Consultancy but also sell products (both their own and others) under a discretionary management agreement. They said that an asset manager will never give PA95 advice to a pension scheme unless they are offering a fiduciary management service.

4. XPS also explained that under a mandate for full Fiduciary Management, the client will have granted the adviser discretion to invest all of its assets under a discretionary management agreement (DMA). Under a partial Fiduciary Management mandate, the client will have granted the adviser discretion to invest some of the assets under a DMA.

5. XPS said that the activities of asset managers are distinct as they do not advise clients. They only market their services; they do not provide PA95 advice unless acting as a Fiduciary Manager.

6. XPS suggested that the CMA should consider the definitions contained in Article 24(7)(a) of MiFID which was adopted by the FCA earlier this year. This definition captures the activities carried out by investment advisers, such as

that they must provide a market review of other products and not just their own.

Third-Party Evaluation

7. XPS said that a typical cost for a third-party evaluator (TPE) to review a tender process would be from £15k - £35k for the tender advice and an annual fee of approximately £12 - £40k for ongoing monitoring of the adviser.[1] The client needs to invest time in the process.

8. XPS said that there was no way of guaranteeing the quality of TPE work at present. They explained that it would be difficult to set a quality benchmark for TPEs as their work is difficult to define. Whilst XPS thought that trustees were better off when receiving independent advice, it did not recommend that the CMA should mandate this.

9. XPS suggested that the FCA should require that investors take independent advice on all significant investment decisions.

Mandatory tendering

10. XPS said that they had plenty of examples of pension schemes receiving a poor outcome as a result of not going through a competitive tender. XPS said that, in their experience, an Investment Consultant will regularly recommend to their client to adopt Fiduciary Management using its own products and that they will rarely mention alternatives or give any comparison of fees or services.

11. XPS described two examples where a scheme had achieved a fee reduction of up to 50% (or £20m in fees) following a review of the incumbent adviser's recommendation that the client should move into their own Fiduciary Management service. XPS explained that these were not isolated events and that it was common for XPS to achieve reductions of 25% in fee levels.

12. XPS further explained that these issues tended to be more frequent where a client was being offered a partial Fiduciary Management mandate as they tended to pay more attention to a full scheme mandate.

13. XPS said that some large firms will offer partial Fiduciary Management without agreeing a DMA with the client. This occurs when the adviser persuades a

[1] The typical cost for a fund of approximately £150m AUM for a third-party evaluation of a tender process would be approximately £25k for the tender review and an annual fee of approximately £15k for ongoing monitoring of the performance of the adviser

client to, for example, invest in its diversified growth fund (DGF). When the adviser is only providing this kind of investment product to a client, then it is acting as a fund manager; however, when the adviser is providing a DGF to an advisory client, then it is acting as a Fiduciary Manager. XPS said that this should be recognised as a Fiduciary Management service. This is because the provider is offering investment advice to the client.

Comments on other proposed remedies

14. On Remedy 2,[2] XPS stated there should be a much clearer dividing line between advice and marketing as investment consultants seem to offer a mix of advice and marketing. The proposed remedy is a step forwards but is not properly addressing the problem. They said that marketing should be separate from advice and marked as such. They suggested that article 24 (7)(a) of MiFID II should address this problem however.

15. On Remedy 8,[3] XPS explained that investment consultants over-promise to their clients about their ability to pick out-performing managers and that it is very difficult to do so, particularly net of fees. So, they think that investment consultants should have to justify their claims. They noted that many advisers have invested significantly in their manager research capabilities. XPS believes that the primary role of an adviser is to ensure that clients are involved in the right asset classes.

16. XPS said that MiFID II has dealt with the reporting by advisers very well and has brought a degree of consistency to the market.

Regulation

17. XPS said that they are CF30 authorised by the FCA and that they do not find this too burdensome. XPS said that advisers should have appropriate qualifications and that, while they have their own standards in place, they would welcome industry-wide standards for advisers.

18. XPS also said that any extension of the FCA's remit should capture all investment advice given by advisers, including strategic investment advice (which is the most important part of investment advice).

[2] **Remedy 3**: Mandatory warnings when selling fiduciary management.
[3] **Remedy 8:** Standardised reporting of asset management products

19. They stated that they pay around £10,000 levy to the FCA each year, but do not know how this would change if the perimeter was extended to cover strategic investment advice.

Other points

20. XPS expressed concern regarding the potential conflict of interest relating to conferences offered by investment consultants which charge substantial fees for fund managers to attend.