



Investment Consultancy Services and Fiduciary Management Services

AON RESPONSE TO CONSULTATION PAPER: DRAFT
DEFINITIONS OF INVESTMENT CONSULTANCY SERVICES
AND FIDUCIARY MANAGEMENT SERVICES FOR THE
PURPOSES OF POTENTIAL REMEDIES

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**INVESTMENT CONSULTANCY AND FIDUCIARY MANAGEMENT MARKET
INVESTIGATION
RESPONSE FROM AON**

INTRODUCTION AND SUMMARY

Aon welcomes the opportunity to respond to the CMA's Consultation Paper: Draft definitions of Investment Consultancy services and Fiduciary Management services for the purposes of potential remedies, dated 2 November 2018 ("**CP**").

Aon has no comments at this time on the proposed definition of "investment consultancy services" which is set out in the CP, although it reserves its rights to comment in future on the definition of that service. This response will therefore focus on the proposed definition of "fiduciary management service" ("**FM**") and makes four core submissions:

- **The proposed definition of 'fiduciary management services' disproportionately impacts IC-FM firms. This is not justified on the basis of CMA's findings.**
- **The CMA must not adopt too narrow a view of what constitutes FM as this would create a significant risk of market distortion.** There is a very real risk that a restrictive definition of FM could (i) create an uneven playing field, and (ii) result in rules avoidance techniques being used by providers. Together these may negatively impact the competitiveness of the market, client choice and, ultimately, result in worse client outcomes.
- **Any proposed definition of 'fiduciary management service' should be subject to round table discussions among key stakeholders before the publication of the CMA's Final Report.** The definitional complexities are clear, and any proposed definition should be subject to detailed discussion by stakeholders in order to avoid any unintended consequences.
- **Aon's proposals for a definition of 'fiduciary management services'.**

1. THE PROPOSED DEFINITION OF FM WILL DISPROPORTIONATELY IMPACT ON IC-FM FIRMS

- 1.1 Aon made detailed submissions in its response to the CMA's provisional decision report, dated 29 August 2018 (the "**PDR Response**"). In the PDR Response Aon clearly raised concerns about the negative impacts that may result from an overly restrictive FM definition. Despite this, **the CMA has proposed a narrow FM definition which will disproportionately impact IC-FM firms.** Aon has fundamental concerns with this narrow focus and considers that this cannot be justified by the CMA's findings and has the potential to significantly distort the market.
- 1.2 As drafted in the CP a service will comprise FM only if it involves the provision of advice.¹ Aon's view is that an element of advice is not essential to FM. Rather, all

¹ CP para 4a.

aspects of an FM service, including asset allocation, manager selection, investment decision making and implementation, may be performed under discretion with no advice being provided to the client at any stage before or during the relationship. An FM service can therefore very easily be provided that does not fall within the proposed definition. For example, the FM service currently provided by Aon to many clients would fall outside the proposed definition because no advice is provided by Aon.

- 1.3 As a result, the current proposed FM definition is very likely to have a disproportionate effect on IC-FM firms, who do provide and will wish to continue to provide advice to clients, whether or not such advice is required or provided in connection with an FM service. By contrast, pure FM firms may adapt their approach, without significant impact on their business, to avoid providing advice and therefore avoid the application of the CMA's remedies.
- 1.4 Further, any definition which encourages investment advice to be split from discretionary management, as is the case with the current drafting, would also be counter-productive, as the CMA's evidence shows that there are benefits to clients if both are provided by the same legal entity or group.

2. THE CMA MUST NOT ADOPT TOO NARROW A VIEW OF WHAT CONSTITUTES FM

- 2.1 Aon made detailed submissions in the PDR Response concerning its view on the need for a carefully crafted definition of FM and the likely negative market consequences that could flow from the adoption of an unduly narrow definition.² We do not seek to repeat our previously made submissions here, but would like to re-emphasise that a poorly crafted FM definition could create an uneven playing field and the potential for rule avoidance.
- 2.2 For example, the requirement that an element of advice be involved in order for a service to comprise an FM service could result in nearly half of the FM firms in the market (i.e. those who are not IC-FM firms) being excluded from the application of the CMA's proposed remedies.

3. ANY DEFINITION OF 'FIDUCIARY MANAGEMENT SERVICES' SHOULD BE SUBJECT TO ROUND TABLE DISCUSSIONS

- 3.1 As has been made clear in previous submissions made by various parties, constructing an appropriate definition of fiduciary management services is extremely difficult. There are various nuances across the market in the manner in which services considered to be 'fiduciary management' have developed. Ensuring that each variant is captured is not straightforward. Further, as discussed above, substitute services are available which must be considered in the drafting to avoid the creation of an uneven playing field or the potential for the development of rule avoidance.

² PDR Response, particularly paras 2.6 to 2.25

3.2 In addition, it is important to recognise that the impact of any definition of 'fiduciary management services' will differ between DB and DC schemes, which are very different markets. In particular, unlike DB schemes, certain costs that may arise from an inappropriate definition may fall directly on the members within the DC space.

3.3 Aon therefore considers that the CMA should subject any definition of 'fiduciary management services' to round table discussions involving key stakeholders before the publication of the CMA's Final Report. We consider this is the only way to obtain a workable definition, capturing everything that needs to be captured and excluding everything else.

4. AON'S PROPOSALS FOR A DEFINITION OF 'FIDUCIARY MANAGEMENT SERVICES'

4.1 Aon considers that the definition of a fiduciary management service should capture a provider which has been appointed by a pension scheme trustee to manage pension scheme assets (irrespective of whether the provider's management choices can be implemented on a discretionary basis or only following the consent of the trustees) in the following circumstances:

4.1.1 the pension scheme trustee has specified a set of parameters upon which the provider must act. These parameters may have been developed by the pension scheme trustee with or without the advice, support or assistance of a third party;

4.1.2 the parameters specified in 4.1.1 above are such that they impact the provider's management decisions relating to (i) asset allocation and (ii) manager and/ or fund selection; and

4.1.3 the provider (or, collectively, inter-connected bodies corporate of the provider) manages at least 80% of the relevant pension scheme's assets.

4.2 Aon agrees that the provision of services to trustees of a pension scheme of which the provider (or inter-connected body corporate) is the principal or controlling employer should be excluded (as suggested in paragraph 6 of the CP).

4.3 The definition above would not capture:

4.3.1 A typical IC service, because an IC would not exercise discretion, as described in 4.1.2; or

4.3.2 A typical discretionary management service, because any parameters provided to a discretionary manager would not normally impact on asset allocation and manager/fund selection.

4.4 It should be noted that the definition set out at 4.1 is a definition in principle only. Clearly the terms 'asset allocation' and 'fund selection' will require their own definitions, which again will be complex to formulate. As set out at 3 above, Aon considers that the most effective way to resolve such definitional issues would be to

hold round table discussions comprising key stakeholders to fully assess the consequences of any definitions that may be adopted.