

INVESTMENT CONSULTANTS MARKET INVESTIGATION

DRAFT ORDER – CONSULTATION

The Investment Consultancy and Fiduciary Management Market Investigation Order 2019

Background

1. On 14 September 2017, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) as provided for by section 234I of the Financial Services and Markets Act 2000, the Financial Conduct Authority (FCA) made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group to conduct a market investigation of the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK.
2. On 12 December 2018 the CMA published its report on the market investigation reference entitled Investment Consultants Market Investigation Final Report (the report).
3. In the report, the CMA decided (among other matters) that:
 - (a) features of the investment consultancy market, individually and in any combination, restrict or distort competition in connection with the supply and acquisition of investment consultancy services in the UK to and by pension scheme trustees and thereby have an adverse effect on competition (AEC) in respect of investment consultancy services;
 - (b) features of the fiduciary management market, individually and in any combination, prevent, restrict or distort competition in connection with the supply and acquisition of fiduciary management services in the UK to and by pension scheme trustees and thereby have an AEC in respect of fiduciary management services; and
 - (c) the CMA should take action to remedy, mitigate or prevent each AEC and the detrimental effect on customers that may be expected to result from each AEC.

4. The CMA indicated in the report that it intended that the CMA would implement some of the remedies by an Order.
5. On Monday 11 February 2019, in accordance with section 165 of, and paragraph 2(1)(a) of Schedule 10 to, the Act, the CMA published a Notice of its intention to make an Order and the proposed Order as part of a package of remedies to remedy, mitigate or prevent the AECs and resulting customer detriment which it had found in the report. In accordance with paragraph 2(1)(b) of Schedule 10 to the Act, the CMA has considered representations made in accordance with the Notice and not withdrawn.
6. The Explanatory Note accompanying the Order provides an explanation of how the Order is expected to operate.
7. On [date], 2019 this Order was notified to the European Commission pursuant to Article 24(12) Directive 2014/65/EU (on markets in financial instruments) in respect of additional requirements intended to be imposed by the Order and the standstill period concluded on [date] 2019 *[two months from the date of notification]*.

ORDER

The CMA makes this Order in performance of its duty under section 138 of the Act, within the period permitted by section 138A of the Act, and in exercise of its powers under section 161 of, and paragraphs 2, 10 and 17 to 23 of Schedule 8 to, the Act and under sections 86 and 87 (as applied by section 164) of the Act.

Part 1

General

1 Title, commencement, application and scope

- 1.1 This Order may be cited as the Investment Consultancy and Fiduciary Management Market Investigation Order 2019.
- 1.2 Part 1, Part 2, Article 4.3, Part 6, Article 12.2, Part 9, Part 10 and Part 11 shall come into force on the day this Order is made.
- 1.3 With the exceptions of Article 4.3 and Article 12.2, Part 3, Part 4, Part 5, Part 7 and Part 8 shall come into force six months from the date on which this Order is made.
- 1.4 The provisions of this Order shall continue in force to the extent that and until:
 - (a) the date on which equivalent provisions are brought into force as part of the regulatory regime of a Relevant Sector Regulator; or
 - (b) the expiry of 10 years beginning with the date on which the Provisions of this Order came into force, whichever is the earlier; or
 - (c) they are varied or revoked under the Act. The variation or revocation of any provision of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.
- 1.5 Any requirement imposed by this Order does not apply to the extent that it applies pursuant to an existing requirement under the regulatory regime of a Relevant Sector Regulator.
- 1.6 This Order shall not apply to the Pension Scheme Trustees of Occupational Pension Schemes listed below in relation to any such scheme:

- (a) a scheme that is not a registrable scheme as defined in section 59 Pensions Act 2004;
- (b) a scheme that is a public service pension scheme as defined in section 318 Pensions Act 2004;
- (c) a Master Trust for which an IC-FM firm is the scheme strategist or scheme funder, and for these purposes:
 - (i) 'scheme strategist' means a person who is responsible for making business decisions relating to the commercial activities of the scheme; and
 - (ii) 'scheme funder' means a person who is liable to provide funds to or in respect of the scheme in circumstances where administration charges received from or in respect of members are not sufficient to cover the costs of establishing or running the scheme or is entitled to receive the profits of the scheme in circumstances where those charges exceed those costs.

Part 2

Interpretation

2 Interpretation

2.1 In this Order:

'Act' means the Enterprise Act 2002;

'AEC' means adverse effect on competition for the purposes of section 134(2) of the Act;

'Ancillary Service' has the same definition as that set out in the Glossary to the FCA Handbook;

'Asset Management' means the management of investments, including selecting and trading individual securities, on behalf of individual retail investors or institutional investors such as pension schemes;

'Asset Manager' means a person carrying on the activity of Asset Management;

'Bid' means a written offer to provide Fiduciary Management Services at a stated price;

‘CMA’ means the Competition and Markets Authority;

‘Commencement Date’ means the date specified for the relevant provision in Article 1.2 or 1.3;

‘Competitive Tender Process’ means a process by which Pension Scheme Trustees have invited and used their best endeavours to obtain bids for the provision of Fiduciary Management Services from three or more unrelated Fiduciary Management Providers and have evaluated the bids received; and for these purposes ‘unrelated’ means independent of each other and thereby in a position to compete with each other;

‘Compliance Statement’ means a statement in the following format:

Investment Consultancy and Fiduciary Management Market Investigation Remedy Compliance Statement for [insert name]
[I/We], [insert name(s)], confirm on behalf of [insert name] that during the period commencing on [insert date] and ending on [insert date], [insert name] [has] complied with Part [insert Part number] of the Investment Consultancy and Fiduciary Management Market Investigation Order 2019.
FOR AND ON BEHALF OF [insert name]
Signature:
Name:
Title:

‘Controlling Employer’ means the employer that has the power to act on behalf of all employers in the scheme in relation to the scheme rules;

‘EU’ means the European Union;

‘FCA’ means the Financial Conduct Authority;

‘Fiduciary Management Agreement’ means a contract for the provision of at least the service described in paragraph (b) in the definition of Fiduciary Management Services;

‘Fiduciary Management Performance Standard’ means a standardised methodology and template for reporting the past investment performance of a Fiduciary Management Provider’s Full Fiduciary Management clients, agreed by the CMA pursuant to Article 10 of this Order.

‘Fiduciary Management Provider’ means a person who provides Fiduciary Management Services;

‘Fiduciary Management Services’ means the provision to Pension Scheme Trustees of services that comprise the following:

- (a) the provision of advice by the Provider (or an Interconnected Body Corporate of the Provider) to Pension Scheme Trustees on one or more of the following:
- (i) investment strategy;
 - (ii) investments that may be made by or on behalf of the Pension Scheme Trustees;
 - (iii) the service described in (b) below; and
- (b) within 12 months from the date on which the advice in (a) is last provided, the Provider (or an Interconnected Body Corporate of the Provider) is appointed by the Pension Scheme Trustees to provide the service of making investment decisions on their behalf on an on-going basis, in respect of all or some of the pension scheme's assets, acting pursuant to the written authority and discretion delegated by the Pension Scheme Trustees to do so and irrespective of whether the investment decisions require the consent of, or are subject to veto by, the Pension Scheme Trustees.
- (c) The reference in (a) to 'advice' means advice on the merits and includes a recommendation or guidance as regards prudent future action.
- (d) The reference in (b) to 'investment decisions' means decisions in relation to investments that may be made and includes but is not limited to decisions in respect of asset allocation and fund/manager selection.
- (e) A Fiduciary Management Service does not include the provision of the services in (a) and (b) above by a Provider to the Pension Scheme Trustees of a pension scheme of which the Provider (or an Interconnected Body Corporate of the Provider) is the Principal Employer or Controlling Employer.

'Full Fiduciary Management', in relation to a client, means a client who is receiving the service in part (b) of Fiduciary Management Services from its Fiduciary Management Provider in respect of 100% of the client's assets;

'IC-FM' in relation to firms, means firms that offer both Investment Consultancy Services and Fiduciary Management Services to clients and includes an Investment Consultancy Provider which is an Interconnected Body Corporate or has any form of partnership or joint venture with a Fiduciary Management Provider;

‘Interconnected Body Corporate’ means a body corporate which is a member of the same group as other bodies corporate and for the purposes of this definition: -

‘group’ means a group consisting of two or more bodies corporate all of whom are interconnected with each other;

any two bodies corporate are interconnected if one of them is a subsidiary of the other, or if both of them are subsidiaries of the same body corporate;

‘subsidiary’ has the meaning given by section 1159 of the Companies Act 2006.

‘Investment Consultancy Agreement’ means a contract for the provision of Investment Consultancy Services;

‘Investment Consultancy Provider’ means a person providing Investment Consultancy Services;

‘Investment Consultancy Services’ means the provision to Pension Scheme Trustees of services where the Provider advises the Pension Scheme Trustees in relation to one or more of the following: -

- (a) investments that may be made;
- (b) any matters in respect of which the Pension Scheme Trustees are required by law to seek advice in relation to the preparation or revision of the statement of investment principles;
- (c) strategic asset allocation;
- (d) manager selection.

The services do not include:

- (a) the provision of advice by a Provider to the Pension Scheme Trustees of a pension scheme of which the Provider (or an Interconnected Body Corporate of the Provider) is the Principal Employer or Controlling Employer;
- (b) the high-level commentary provided by the scheme actuary in or in respect of triennial valuation reports and with regard to the link between the investment approach and the pension scheme’s funding objectives.

‘Investment Services’ means any of the services and activities listed in Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, relating to any of the instruments listed in Part 1 of Schedule 2 to that order;

‘Marketing Material’ means written material provided by an IC-FM firm to their existing Investment Consultancy Service clients (or to an individual such client) which in any way seeks to invite or induce those clients (or client) to purchase Fiduciary Management Services from the IC-FM firm;

‘Master Trust’ means a form of multi-employer trust-based occupational pension scheme established under trust and intended for employers that are not Interconnected Bodies Corporate;

‘Notice’ means notice in writing;

‘Occupational Pension Scheme’ means a retirement savings plan provided by an employer for its employees;

‘Pension Scheme Trustees’ means the trustees or managers of trust-based Occupational Pension Schemes;

‘Principal Employer’ means the principal employer for the purposes of the scheme in accordance with the scheme rules;

‘Provider’ means Investment Consultancy Provider or Fiduciary Management Provider or IC-FM firm;

‘Relevant Sector Regulator’ means the FCA or TPR as applicable;

‘Strategic Objectives’ means defined objectives for the Investment Consultancy Provider’s investment advice, to meet the trustees’ investment strategy.

‘TPR’ means the Pensions Regulator.

- 2.2 The Interpretation Act 1978 applies to this Order as it applies to Acts of Parliament except where a contrary intention appears in this Order.

Part 3

Mandatory tendering for Fiduciary Management – prohibition on trustees entering into or continuing a Fiduciary Management Agreement without

carrying out a Competitive Tender Process and corresponding obligations on Fiduciary Management Providers

3 The Prohibition

3.1 Articles 3.2 to 3.4 shall apply subject to Article 3.5.

3.2 Where there is no existing Fiduciary Management Agreement covering any of a pension scheme's assets, Pension Scheme Trustees and Fiduciary Management Providers must not enter into one or more than one Fiduciary Management Agreement which, individually or when aggregated with each other, would cover 20% or more of a pension scheme's assets at the date of the Fiduciary Management Agreement unless:

(a) the Pension Scheme Trustees have carried out a Competitive Tender Process; and

(b) the Pension Scheme Trustees have provided to the Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.

3.3 Where there exists one or more than one Fiduciary Management Agreement covering in total less than 20% of a pension scheme's assets and that Fiduciary Management Agreement or those Fiduciary Management Agreements were not entered into as a result of a Competitive Tender Process, Pension Scheme Trustees and Fiduciary Management Providers must not:

(i) make or accept any increase in the level of assets under management under the existing Fiduciary Management Agreement or Fiduciary Management Agreements which would bring the total of a pension scheme's assets under management to 20% or more on the date of the increase, or

(ii) enter into a new Fiduciary Management Agreement which, individually or when aggregated with every existing Fiduciary Management Agreement, would cover 20% or more of a pension scheme's assets at the date of the new Fiduciary Management Agreement

unless:

(a) the Pension Scheme Trustees have carried out a Competitive Tender Process in respect of all of the pension scheme's assets which would be covered by one or more than one Fiduciary Management Agreement; and

(b) the Pension Scheme Trustees have provided to the Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.

3.4 Where there exists one or more than one Fiduciary Management Agreement covering in total less than 20% of a pension scheme's assets and that Fiduciary Management Agreement or those Fiduciary Management Agreements were entered into as a result of a Competitive Tender Process, Pension Scheme Trustees and Fiduciary Management Providers must not:

(i) make or accept any increase in the level of assets under management under the existing Fiduciary Management Agreement or Fiduciary Management Agreements which would bring the total of a pension scheme's assets under management to 20% or more on the date of the increase, or

(ii) enter into a new Fiduciary Management Agreement which, individually or when aggregated with every existing Fiduciary Management Agreement, would cover 20% or more of a pension scheme's assets at the date of the new Fiduciary Management Agreement

unless:

(a) the Pension Scheme Trustees have carried out a Competitive Tender Process in respect of the increment in the assets which would be covered by one or more than one Fiduciary Management Agreement; and

(b) the Pension Scheme Trustees have provided to the Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.

3.5 Articles 3.2 to 3.4 do not apply to the Pension Scheme Trustees of a pension scheme, in relation to which the Pension Scheme Trustees are contracting authorities for the purposes of the Public Contracts Regulations 2015 and appoint or have appointed a Fiduciary Management Provider in compliance with those Regulations.

4 Requirement to hold a Competitive Tender Process where Fiduciary Management Agreement(s) covering 20% or more of a pension scheme's assets already exist

- 4.1 Articles 4.2 and 4.3 shall apply subject to Article 4.4.
- 4.2 Where Pension Scheme Trustees have entered into one or more than one Fiduciary Management Agreement with one or more than one Fiduciary Management Provider before this Order comes into force in respect of a total of 20% or more of a pension scheme's assets without conducting a Competitive Tender Process, they must not continue to obtain Fiduciary Management Services from the Fiduciary Management Provider(s) in question for more than five years from the commencement date of the first Fiduciary Management Agreement unless they have carried out a Competitive Tender Process as a result of which the Fiduciary Management Provider in question has been selected to provide Fiduciary Management Services.
- 4.3 Where the five year period specified in Article 4.1 has expired at the date on which this Order is made or will expire within two years beginning with that date, Pension Scheme Trustees must not continue to obtain Fiduciary Management Services from the Fiduciary Management Provider in question for more than two years beginning with the date on which this Order is made unless they have carried out a Competitive Tender Process as a result of which the Fiduciary Management Provider has been selected to provide Fiduciary Management Services.
- 4.4 Articles 4.2 and 4.3 do not apply to the Pension Scheme Trustees of a pension scheme, in relation to which the Pension Scheme Trustees are contracting authorities for the purposes of the Public Contracts Regulations 2015 and have appointed a Fiduciary Management Provider in compliance with those Regulations.

Part 4

Separation of advice and Marketing Material and use of mandatory wording in respect of Fiduciary Management Services

5 Prohibition on supplying advice and Marketing Material in respect of Fiduciary Management Services within the same document

- 5.1 IC-FM firms must not provide to their Pension Scheme Trustee clients within the same document Marketing Material in respect of Fiduciary Management Services and advice in respect of Investment Consultancy Services or Fiduciary Management Services.

6 Mandatory wording

- 6.1 All Marketing Material provided by IC-FM firms in respect of Fiduciary Management Services must:
- (a) be labelled as such and clearly identifiable as Marketing Material;
 - (b) contain the wording specified in Article 7.1; and
 - (c) comply with Articles 7.2 and 7.3.

7 Content and format

- 7.1 The wording required by Article 6.1 is:

‘This document contains marketing material about our fiduciary management service. This document does not represent impartial advice on this service.

In certain cases, you are required to conduct a competitive tender process prior to appointing a fiduciary manager.

Guidance on running a tender process is available from the Pensions Regulator.’

- 7.2 The wording in Article 7.1 must be included on the first page of each Marketing Material document.
- 7.3 The wording required by Articles 6.1 and 7.1 must be in at least the same font size as the predominant font size used throughout the remainder of the document. The text should not be disguised, diminished or obscured by graphics or in other ways.

Part 5

Fiduciary Management Services - fee reporting requirements

8 Requirement to report disaggregated Fiduciary Management Services fees to existing clients

- 8.1 A Fiduciary Management Provider must provide a fee statement to each of its Pension Scheme Trustee clients in good time, on a regular basis and at least annually. This fee statement must set out in a comprehensible form the following information, such that each client is reasonably able to understand it

and to take decisions in relation to the Fiduciary Management Services on an informed basis:

- (a) A disaggregated itemisation of the overall costs and related charges incurred during the reporting period. The following fee elements must be clearly itemised:
 - (i) All costs and associated charges charged by the Fiduciary Management Provider for the Fiduciary Management Service, covering advice and implementation, and including any incidental costs, such as performance fees, paid during the reporting period;
 - (ii) Asset Management fees in respect of the financial products and funds provided by the Fiduciary Management Provider and those provided by third party Asset Managers and any incidental costs and performance-related payments;
 - (iii) In respect of (ii) above, all costs and charges associated with execution must be itemised separately from the Asset Management fees;
 - (iv) All other investment costs and charges, including custodian fees, administration charges and any charges that are related to Ancillary Services. These cost items may be bundled in one single fee item.
- (b) The aggregated costs and charges incurred during the reporting period, to include all costs and charges incurred as part of the Fiduciary Management Service, including those deducted directly from assets, those invoiced separately and those paid to the Fiduciary Management Provider and to third parties.

8.2 The aggregated costs and charges, including the itemised costs and charges, must be totalled and expressed both as a cash amount and as a percentage of assets under management.

8.3 The information in Article 8.1 must be provided on a fund-by-fund or product-by-product basis, including details of the impact of such costs and charges on the return of underlying funds.

9 Minimum requirements on Fiduciary Management Providers for fee disclosure to potential clients

9.1 When participating in a Competitive Tender Process or any other tender process that Pension Scheme Trustees may carry out in respect of Fiduciary Management Services, Fiduciary Management Providers must disclose and

itemise all costs and related charges that will be incurred by the client as required by Article 9.2 and 9.3.

9.2 Costs and charges must be totalled and expressed both as a cash amount and as a percentage of assets under management and clearly set out each of the following:

(a) The total ongoing costs and charges to be incurred for the provision of the Fiduciary Management Service each year, including costs and charges related to it, those deducted directly from assets and those invoiced separately.

(b) An itemisation of the total costs and charges, including the following elements:

(i) The fee for the Fiduciary Management Service, covering advice and implementation. Any incidental costs such as performance fees must be separated out from the Fiduciary Management fee and itemised separately.

(ii) Asset Management fees, covering products and funds or fund-of-funds provided by the Fiduciary Management Provider, and those provided by third party Asset Managers. These costs and charges must include any costs associated with execution such as transaction costs and incidental costs such as performance-related payments.

(iii) All other investment costs and charges, such as custodian fees and administration charges and any charges that are related to Ancillary Services likely to be incurred.

(c) Any one-off costs and charges that will be, or are likely to be, incurred by the client, to include:

(i) Estimated transaction costs in moving assets into the proposed portfolio. These must include both the implicit and explicit costs of transferring assets, even if these costs are paid to third parties such as brokers.

(ii) Any one-off charges for advice, such as for refining the investment portfolio.

(iii) Any other one-off charges, such as legal fees, or charges for 'onboarding' services.

9.3 Fiduciary Management Providers must disclose the potential exit costs and charges and costs arising if the client were to switch at a future date to

another Fiduciary Management Provider for the services being tendered, to include:

- (a) Clear disclosure of any explicit exit costs and charges that would be incurred as a result of a change of Fiduciary Management Provider, such as any exit charges or 'lock-in' costs and charges in the contract.
- (b) A clear statement that transaction costs might be incurred in switching Fiduciary Management Provider, and that such costs may be similar in magnitude to those disclosed. The Fiduciary Management Provider must disclose whether there are any features of the proposed portfolio that might increase such transaction costs.

Part 6

Fiduciary Management Services - performance reporting requirements

10 Use of standardised methodology and template for reporting past performance of Fiduciary Management Services to potential clients

- 10.1 Within six months beginning with the date on which this Order comes into force, Fiduciary Management Providers must put in place a Fiduciary Management Performance Standard, approved by the CMA.
- 10.2 The submission of a Fiduciary Management Performance Standard to the CMA for approval must be from: -
 - (a) a majority of Fiduciary Management Providers or an association of investment professionals supported by a majority of Fiduciary Management Providers and
 - (b) representatives of pension schemes.
- 10.3 The submission must include:
 - (a) A description of the Fiduciary Management Performance Standard and an explanation of how it: (i) is non-discriminatory; and (ii) would not otherwise create any competitive disadvantage between Fiduciary Management Providers;
 - (b) A list of Fiduciary Management Providers that have agreed to adopt the Fiduciary Management Performance Standard;

- (c) A description of the process to ensure that the Fiduciary Management Performance Standard is updated when needed so that it remains current; and
- (d) A description of the activities that Fiduciary Management Providers are undertaking, or are going to undertake, to help TPR provide Pension Scheme Trustees with guidance on using the Fiduciary Management Performance Standard.

10.4 From the date on which the Fiduciary Management Performance Standard is approved by the CMA pursuant to Article 10 or following the process set out in Article 11, it must be used by all Fiduciary Management Providers when reporting the past investment performance of their Full Fiduciary Management clients, including in all tender submissions and marketing communications.

11 Appointment of an independent person by the CMA

- 11.1 The provisions of Article 11.2 to 11.5 shall apply if a Fiduciary Management Performance Standard is not put in place in accordance with Article 10.
- 11.2 As soon as is reasonably practicable from the expiry of the period in Article 10.1, the CMA will put in place and set the terms and conditions of the appointment of an independent person, at the expense of Fiduciary Management Providers in proportion to their Fiduciary Management Services revenues, to oversee the development and implementation of the Fiduciary Management Performance Standard that is to be used by all Fiduciary Management Providers in accordance with Article 10.4. The terms and conditions must include a timetable (not exceeding six months from the date of the appointment of the independent person) for the development and implementation of the Fiduciary Management Performance Standard.
- 11.3 The independent person must take such steps as he or she reasonably considers necessary to carry out his or her function effectively and must comply with any reasonable requests made by the CMA for the purpose of carrying out his or her function under this Order.
- 11.4 The Fiduciary Management Providers shall remunerate and reimburse the independent person for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the independence or the ability effectively and properly to carry out his or her function.
- 11.5 The terms and conditions of the appointment will include the requirement that the independent person must promptly inform the CMA of any material

developments arising from the operation of his or her function and provide to the CMA a written report every two weeks.

Part 7

Investment Consultancy Services - objective setting and performance reporting requirements

12 The Prohibition

12.1 Subject to Article 12.2, Pension Scheme Trustees must not enter into a contract with an Investment Consultancy Provider for the provision of Investment Consultancy Services or continue to obtain Investment Consultancy Services from an Investment Consultancy Provider unless the Pension Scheme Trustees have set Strategic Objectives for the Investment Consultancy Provider;

Exclusion

12.2 Article 12.1 does not apply to contracts for the provision of Investment Consultancy Services which are due to terminate within six months beginning with the date on which this Order is made.

Part 8

Minimum standard for how Investment Consultancy Providers and Fiduciary Management Providers report performance of recommended Asset Management products and funds to potential clients

13 The minimum standard

13.1 Investment Consultancy Providers and Fiduciary Management Providers must adhere to the requirements in Articles 13.2 to 13.4 when reporting to potential Pension Scheme Trustee clients on the past performance of their recommended Asset Management products and in-house financial instruments.

13.2 Where the information compares Investment Services or Ancillary Services, financial instruments, or persons providing Investment Services or Ancillary Services, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the following conditions are satisfied:

(a) the comparison is meaningful and presented in a fair and balanced way;

- (b) the sources of the information used for the comparison are specified;
- (c) the key facts and assumptions used to make the comparison are included.

13.3 Where the information contains an indication of past performance of a financial instrument, a financial index or an Investment Service, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the following conditions are satisfied:

- (a) that indication is not the most prominent feature of the communication;
- (b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the Investment Service has been provided where less than 5 years, or such longer period as the Investment Consultancy Provider or Fiduciary Management Provider may decide, and in every case that performance information is based on complete 12-month periods;
- (c) the reference period and the source of information is clearly stated;
- (d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (e) where the indication relies on figures denominated in a currency other than that of the Member State in which the Pension Scheme Trustee client or potential Pension Scheme Trustee client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (f) where the indication is based on gross performance, the effect of commissions, costs or other charges are disclosed.

13.4 Where the information includes or refers to simulated past performance, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the information relates to a financial instrument or a financial index, and the following conditions are satisfied:

- (a) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the financial instrument concerned;
- (b) in respect of the actual past performance referred to in point 13.4 (a), the conditions set out in points (a) to (c), (e) and (f) of Article 13.3 are satisfied;

- (c) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

Part 9

Monitoring and compliance

14 Investigation powers

- 14.1 Section 174 of the Act shall apply to the enforcement functions of the CMA under this Order.

15 Compliance reporting

- 15.1 Pension Scheme Trustees and Fiduciary Management Providers subject to Part 3 must submit Part 3 Compliance Statements to the CMA within 12 months and one week from the date on which each of Articles 3.2 to 3.4, and Articles 4.2 and Article 4.3 come into force and annually thereafter. Each Part 3 Compliance Statement shall confirm the extent to which those Articles of Part 3 that were in force during the reporting period have been complied with during that period.
- 15.2 IC-FM firms subject to Part 4 must submit Part 4 Compliance Statements to the CMA within 12 months and one week from the date on which each of Article 5.1, Article 6.1 and Articles 7.1 to 7.3 comes into force and annually thereafter. Each Part 4 Compliance Statement shall confirm the extent to which those Articles of Part 4 that were in force during the reporting period have been complied with during that period.
- 15.3 Fiduciary Management Providers subject to Part 5 must submit Part 5 Compliance Statements to the CMA within 12 months and one week from the date on which each of Articles 8.1 to 8.4 and Articles 9.1 to 9.6 comes into force and annually thereafter. Each Part 5 Compliance Statement shall confirm the extent to which those Articles of Part 5 that were in force during the reporting period have been complied with during that period.
- 15.4 Fiduciary Management Providers subject to Part 6 must submit Part 6 Compliance Statements to the CMA within 3 months and one week from the date on which Article 10.4 comes into force and every 3 months thereafter. Each Part 6 Compliance Statement shall confirm the extent to which those Articles of Part 6 that were in force during the reporting period have been complied with during that period.

- 15.5 Pension Scheme Trustees subject to Part 7 must submit Part 7 Compliance Statements to the CMA within 12 months and one week from the date on which Article 12.1 comes into force and annually thereafter. Each Part 7 Compliance Statement shall confirm the extent to which those Articles of Part 7 that were in force during the reporting period have been complied with during that period.
- 15.6 Investment Consultancy Providers and Fiduciary Management Providers subject to Part 8 must submit Part 8 Compliance Statements to the CMA within 12 months and one week from the date on which Article 13.1 comes into force and annually thereafter. Each Part 8 Compliance Statement shall confirm the extent to which those Articles of Part 8 that were in force during the reporting period have been complied with during that period.

16 Additional compliance reporting requirements

- 16.1 As applicable, Investment Consultancy Providers, Fiduciary Management Providers and Pension Scheme Trustees must ensure that any Compliance Statement required by this Part 9 is submitted together with a signed certificate stating that:
- (a) the relevant Compliance Statement has been prepared in accordance with the requirements of this Order; and
 - (b) for the period to which the Compliance Statement relates, the Investment Consultancy Provider, Fiduciary Management Provider or Pension Scheme Trustees (as applicable) has or have complied in all material respects with the requirements of this Order and reasonably expect to continue to do so.
- 16.2 Where the certificate is completed by an Investment Consultancy Provider or a Fiduciary Management Provider which is a body corporate, it must be signed by two of its directors, who may be:
- (a) the Chief Executive Officer;
 - (b) the Managing Director;
 - (c) any non-executive director; or
 - (d) any director with responsibility for a relevant business unit.
- 16.3 Where the certificate is completed by an Investment Consultancy Provider or a Fiduciary Management Provider which is an individual, it must be signed by that individual.

- 16.4 Where the certificate is completed by an Investment Consultancy Provider or a Fiduciary Management Provider which is a partnership, it must be signed by two of the partners.
- 16.5 Where the certificate is completed by Pension Scheme Trustees, it must be signed by:
- (a) a director of any sole corporate trustee; or
 - (b) the Chair of the Board of Trustees; or
 - (c) only if there is no Chair or the Chair is not available, any other member of the Board of Trustees.
- 16.6 If Investment Consultancy Providers, Fiduciary Management Providers or Pension Scheme Trustees are aware of any failure to comply with any part of this Order, they must report such non-compliance to the CMA within 14 days of becoming aware of the failure to comply and provide a brief description of the steps taken to address the failure.

Part 10

Directions by the CMA as to compliance

17 Directions

- 17.1 The CMA may give directions falling within Article 17.2 to:
- (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporated.
- 17.2 The directions referred to in Article 17.1 are directions in writing:
- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do, or refrain from doing, anything so specified or described which the person is required by this Order to do or refrain from doing.
- 17.3 The CMA may vary or revoke any directions so given.

Part 11

Supply of information to the CMA

18 Duty to supply information to the CMA

- 18.1 Any person to whom this Order applies shall have a duty, as may be required by the CMA, to provide any information and documents for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order or to review the effectiveness of the operation of this Order or any provision of this Order.
- 18.2 Any person to whom this Order applies shall have a duty, as may be required by the CMA, to keep and produce those records specified in writing by the CMA that relate to the operation of any provision of this Order.
- 18.3 Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provision of this Order shall have a duty, as may be required by the CMA to attend and provide such information in person.
- 18.4 Subject to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provision of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

(signed)

Group Chair

[date]