

INVESTMENT CONSULTANTS MARKET INVESTIGATION

The Investment Consultancy and Fiduciary Management Market Investigation Order 2019

Notice of intention to make an Order under section 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Order

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 19 September 2017, the CMA appointed from its panel a group of four independent members to conduct the market investigation and publish a final report.
3. On 12 December 2018, the CMA published its report under section 136 of the Act, entitled Investment Consultants Market Investigation Final Report (the report), in which it decided in accordance with section 134(1), (2) and (4) of the Act that:
 - (a) there are features of the investment consultancy market which, 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) there are features of the fiduciary management market which, 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;

- (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;
- (d) in order to address the AECs and resulting customer detriment, a package of remedies should be imposed consisting of:
 - (i) a prohibition on the receipt of fiduciary management services by pension scheme trustees unless the pension scheme trustees have carried out a competitive tender process;
 - (ii) a prohibition on the supply by IC-FM firms of advice and marketing materials within the same document and the setting of mandatory wording that must be used in all marketing materials;
 - (iii) a requirement that fiduciary management providers report disaggregated fiduciary management fees to existing clients and the setting of minimum requirements to be met by fiduciary management providers regarding fee disclosure when selling fiduciary management services;
 - (iv) a requirement for the use of a standardised methodology and template for reporting past performance of fiduciary management services to prospective clients;
 - (v) a prohibition on pension scheme trustees from entering into a contract for the provision of investment consultancy services unless the pension scheme trustees have set strategic objectives for the investment consultancy provider; and
 - (vi) a requirement that investment consultants and fiduciary managers adhere to basic requirements when reporting to prospective clients on the past performance of their recommended asset management products and in-house investment products; and
- (e) there should also be additional published guidance to assist pension scheme trustees, investment consultancy providers and fiduciary management providers in complying with the Order.

4. The CMA intends to implement the package of remedies by: (a) the Investment Consultancy and Fiduciary Management Market Investigation Order 2019 (a draft of which is attached to this Notice) (the Draft Order) and (b) recommendations it has made in the report to the Pensions Regulator, the Department for Work and Pensions and the Financial Conduct Authority.

5. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10 to the Act, the CMA hereby gives notice of its intention to make an Order in the terms attached to this Notice and invites representations on the Draft Order from any interested person or persons.
6. This Notice and the Draft Order, together with a draft Explanatory Note, have been published on the CMA website.
7. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the proposed Order is expected to operate.
8. The CMA invites written representations on the Draft Order and draft Explanatory Note from any interested person or persons. The CMA will have regard to any representations made in response to this Notice. The CMA may also make modifications to the Draft Order and draft Explanatory Note as a result of any representations. If the CMA considers that any representation necessitates a material change to the Draft Order, the CMA will give notice of the proposed modifications.
9. Representations should reach the CMA by 10am on Wednesday 13 March 2019. Representations should be in writing and should be addressed to:

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Group Chair
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