

PRIVATE

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Praful Depala  
Project Assistant  
Investment Consultants Market Investigation  
Competition and Markets Authority  
Victoria House, Southampton Row  
London WC1B 4AD

Dear Praful

## Response to the CMA's draft Investment Consultancy and Fiduciary Management Market Investigation Order 2019 ('the draft Order')

We note the CMA's publication of the draft Order and this letter sets out our response.

### Fiduciary Management Agreement definition

We welcome the CMA's approach to defining Fiduciary Management Services (FMS) as broadly a combination of advisory and investment management services.

However, we believe there is ambiguity in the definition of a Fiduciary Management Agreement (FMA).

The basis for much of the mandatory tendering remedy is the approach which should be taken (or has been previously taken) when entering into a FMA. The FMA is defined *as a contract for the provision of at least the service described in paragraph (b) in the definition of Fiduciary Management Services*, with the services described in that paragraph being asset management in nature, i.e. *making investment decisions*.

The ambiguity in our view is as follows:

- It could be interpreted that the remedy applies for agreements which are only asset management in nature, i.e. where no advisory services are provided.
- Some fiduciary managers require clients to enter into separate advisory and asset management contracts in order to provide fiduciary management services. It is not clear that this approach is covered by the FMA definition.

Our views are:

- All contracts for FMS should be captured by the CMA's mandatory tendering remedy (subject to the exclusions identified in the draft Order); and
- Where an organisation has the *ability* to provide FMS but provides *only* asset management services to a given client (i.e. no advisory services), then for that client the asset management services should not be captured by the CMA's mandatory tendering remedy. In these cases, it should be incumbent on the pension scheme trustees and their investment consultant to determine the most suitable tendering process. By definition that investment consultant will not be from the same organisation as the organisation providing the asset management services.

 Barnett Waddingham LLP, One London Wall Place, London, EC2Y 5AU  
 0333 11 11 222  020 7776 3800  [www.barnett-waddingham.co.uk](http://www.barnett-waddingham.co.uk)

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Presumably this is consistent with what the CMA intends.

We would be happy to provide further input into how the FMA could be redefined to provide more clarity.

### Partial fiduciary management

We note that some 'partial fiduciary management' approaches will be captured by the FMS definition – where this represents at least 20% of scheme assets – and we agree that this is desirable.

However, some of these partial approaches are provided by a small number of fiduciary managers, e.g. Liability Driven Investment (LDI). The mandatory tendering requirement for trustees to use their best endeavours to obtain bids from at least three other providers of FMS could in our view be unnecessarily restrictive in these cases.

Taking as an example a scheme which only uses FMS to the extent that their current investment consultant also manages the scheme's LDI assets. If the contract were to be retendered, the other competing parties would only be required to provide asset management services; no advisory services would be needed as the scheme would be retaining its current investment consultant at least for the non-LDI assets (but highly likely the LDI assets too). However, the mandatory tendering requirement states that the other bidders must be other providers of FMS. This would therefore exclude a number of LDI asset managers which do not provide FMS, even though there is no intention to ultimately award an FMS contract.

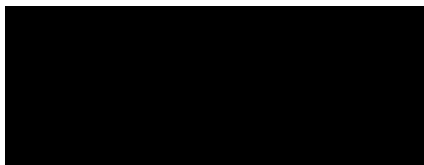
We would be happy to provide further input into how this and similar issues relating to partial fiduciary management could be managed.

### The Pensions Regulator (TPR) guidance and widening the FCA's regulatory perimeter

We note that the draft Order is silent on the publication of TPR guidance or widening the FCA's regulatory perimeter. We understand that this is by necessity due to the CMA's terms of reference.

For the record, we note that we continue to be supportive of further work in both of these areas, as per our previous representations to the CMA.

Yours sincerely

A large black rectangular box redacting the signature of Alex Pocock.

**Alex Pocock FIA**  
**Partner and Head of Investment Consulting, Barnett Waddingham LLP**