

Introduction

This is LCP's response to the consultation on the CMA's draft Order following the Investment Consultancy and Fiduciary Management Market Investigation.

We welcome the opportunity to comment on the draft Order. We are supportive of much of the Order and make only limited comments.

1. Part 2. Interpretation of "Competitive Tender Process"

A Competitive Tender Process is defined such that the trustees must seek bids from at least three candidate Fiduciary Management Providers. In our experience, some trustee boards will use the tender process to decide between a Fiduciary Management Service and an asset management service. This is particularly true when a IC-FM has proposed a partial-fiduciary management approach and the client is deciding between the IC-FM's fund-of-funds and asset managers' fund-of-funds. We suggest the requirement for a tender should be to seek bids from at least three firms that could implement the portfolio (ie part (b) of the definition of Fiduciary Management Services).

The CMA states in the explanatory note to the definition of Fiduciary Management Services that some asset management services overlap with part (b) services in the definition. We believe, therefore, it is reasonable to allow comparison between the two types as sufficient to demonstrate a competitive tender has taken place.

2. Part 2. Interpretation of "Fiduciary Management Services"

2.1. Clauses (a) and (b)

The definition of Fiduciary Management Services states that it is comprised of two services: advice (under part (a) of the definition); and implementation (under part (b)).

The definition of Fiduciary Management Services is dependent on the sequence these appointments are made. Under the definition, Pension Scheme Trustees who appoint a firm to provide the standalone implementation services under part (b) and then subsequently appoint the same firm to provide the advice services under part (a) do not have Fiduciary Management Services and have not appointed a Fiduciary Management Provider.

There are several asset management firms that offer services very similar to Fiduciary Management Services. Under the current definition, for any existing asset management client that they convert to their fiduciary-like offering, they will not be required to comply with this Order. We think this creates an unfair

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playing field and providers in this situation should have to comply with Parts 4, 5, 6, 8 and 9 of the Order.

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2.2. Clause (e)

The definition of a Fiduciary Management Service excludes situations where the sponsoring employer has in-house expertise (part (e) of the definition of Fiduciary Management Services). The definition and related definition of an Interconnected Body Corporate only appear to cover the situation where the in-house investment manager is a subsidiary of, or a related company to, the sponsoring employer. For some of our clients, the in-house investment manager is owned by the pension scheme. We assume the intention is for this situation also to be excluded from the definition of Fiduciary Management Services and suggest the CMA clarifies this.

3. Part 4. Clause 5.1

We suggest that the CMA clarifies that marketing material includes any document that refers to or describes the IC-FM's own offering of implementation services under Fiduciary Management Services. In particular, it should be made clear that marketing material also includes any advice to invest less than the threshold level of 20% of a Scheme's assets in a product provided by the IC-FM firm.

4. Part 5

We understand the CMA's intention is to provide clear reporting on the fees and costs related to the Fiduciary Management Service. It is not clear to us that the drafting in Sections 8 and 9 achieves this.

In the case where the Fiduciary Manager Provider charges fees at two levels:

1. a fee for the advice and overall implementation of the portfolio; and
2. a fee within each of its own fund-of-funds products.

It is clear that the fee under (1) above is disclosed under 8.1.a(i) to existing clients and under 9.2.b(i) to potential clients.

It seems possible, however, that Providers could interpret the Order so that the fee under (2) above is aggregated with third-party asset management fees and reported as a single figure under 8.1.a(ii) and 9.2.b(ii). The total paid to the Fiduciary Management Provider would not be calculable from this information.

We do not think this is the CMA's intention and it may wish to clarify:

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- where charges associated with Fiduciary Management Providers fund of funds (or fund of one underlying third-party manager) are paid to the Fiduciary Management Provider then they should be disclosed; and
- under what circumstances it may be appropriate to aggregate revenue with other third-party charges; such as when the Fiduciary Management Provider is also the asset manager.

5. Clause 16.6

We suggest this clause is redrafted to say:

“If ~~an~~ Investment Consultancy Providers, ~~a~~ Fiduciary Management Providers or Pension Scheme Trustees are aware of any failure ~~by themselves~~ 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.”