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Project Assistant
Investment Consultants Market Investigation
Competition and Markets Authority
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Sent by email to investmentconsultants@cma.gov.uk

12 March 2019

Dear Praful,

The CMA Investment Consultants Market Investigation Draft Order and Explanatory Note

We are writing to provide Muse Advisory's comments on The CMA Investment Consultants Market Investigation Draft Order and Explanatory Note.

Muse Advisory is an independent firm specialising in the governance aspects of running pension schemes. We provide investment governance advice including helping trustees decide whether Fiduciary Management (FM) is the right governance solution for them and supporting them through FM and Investment Consultant (IC) selection exercises. We limit our comments in this response to the governance and practical implementation aspects of the Order and Note and particular points that may cause practical issues for trustees, or which may need clarification and/ or guidance from the Pensions Regulator (TPR).

Overall, we welcome the CMA's proposed remedies and the implementation approaches suggested in the Draft Order. However, we would urge the CMA and TPR to ensure that the guidance created for trustees helps to ensure that compliance cannot become a 'box-ticking' exercise. Good governance would require that any tendering is undertaken with pension schemes' specific characteristics and circumstances in mind. This would include tendering/ review of IC appointments on which the Order is silent. Further detail on our thoughts are given below.

Trustees' ability/ willingness to comply – FM Tendering and IC Objective Setting

Trustees may find it difficult to comply with the order in a number of areas and further guidance may be required to cover these circumstances via TPR:

- The Order assumes that trustees will be able to attract tenders from at least three providers when reviewing their existing FM or making a new FM appointment. FMs may decline to participate for several reasons including:
 - Insufficient capacity to respond – especially if large volumes of tenders arise (as may be expected) during the first two years after the Order is made;

- Limited expectations of success – this could occur in a number of circumstances; most notably if the FM believes that the trustees are ‘box-ticking’ rather than running a genuine tender;
- Insufficient revenue expectations if the tender relates to a small client or a small proportion of a larger client’s portfolio;
- Scheme specific circumstances – for example, a Master Trust where FM is provided by an ‘in-house’ team.

It would be helpful for the CMA to set out what would happen in these circumstances, for example:

- will inviting tenders constitute compliance with the Order?
- how will the TPR guidance in this area help to avoid the potential for trustees ‘gaming’ the process? For example, by inviting FMs to tender who are not expected to respond thus avoiding the need to change.

It will also be helpful for TPR’s guidance to set out what would constitute a good tender i.e. one which takes into account schemes’ specific characteristics and circumstances. This would help avoid the compliance with the Order becoming just a ‘box-ticking’ exercise.

The need to set strategic objectives for ICs prior to appointment may also prove difficult, depending on how the TPR defines what constitutes appropriate strategic objectives in its guidance. This is because the first role of a newly appointed IC is typically to advise on appropriate strategic objectives, and it is these objectives which, in part, should inform the objectives set for the IC. A time limit for creating strategic objectives after appointment may represent an appropriate way to overcome this issue.

The 20% FM tendering limit

The Order does not appear to cover the situation in which a scheme’s assets that are with a FM are more than 20% solely as a result of market movements, particularly where this is temporary situation. Further guidance on how trustees should deal with this situation would be helpful. In general, it would also be helpful for trustees to understand over what timescale an FM tender exercise should be conducted once the 20% limit is breached.

IC appointments

The Order does not require trustees to tender IC appointments. In our view, best practice governance would include the competitive tendering of all service provider appointments. In our experience most trustees do tender IC appointments from time to time, although not necessarily always in accordance with a specific timetable. Where IC appointments are tendered, the trustee may anticipate that in due course they may wish to delegate more of the implementation to the extent that ultimately FM services are considered. As a result, the IC tender may request information on implementation and FM capabilities and make those part of the success criteria for the tender. In those circumstances, where the trustee ultimately uses the chosen IC’s FM services, would the CMA consider this to be a bona fide tender or would the CMA’s view be that a further tender is needed? Will TPR be providing guidance on this issue?

Exit costs

The Order requires FMs to provide various information on costs at exit, including explicit charges, costs created by lock-ins and transaction costs. The information regarding transaction costs would be highly assumption dependent; in particular a portfolio structure at the time of divestment will need to be assumed and it is highly likely that a FM’s portfolio will change over time through market movements, the implementation of dynamic

views and changes in strategy in response to a particular client's context (e.g. a portfolio that is de-risked as funding improves). Providing a clear statement that transaction costs at exit will be similar to the disclosures made may therefore prove to be problematic for FMs. It may be more helpful to supplement the information on explicit costs and charges with a description of a client's options at exit and provide undertakings that the exiting FM will co-operate with the incoming FM to identify the opportunities to limit transaction costs on exit.

Performance standard

We fully support the need for the adoption of a consistent performance standard for FMs (Muse Advisory is a member of the IC Select Performance Standard Steering Group). Ideally the standard should ultimately be in the control of an existing performance standard setting organisation with a 'global reach' e.g. the CFA Institute.

Whilst performance information should be central to assessing the success of a FM, it is important to reflect on the fact that fiduciary management is a governance solution for trustees (i.e.: it is a means of delivering more time and resource to trustees) when making assessments. Assessments should therefore also include a range of qualitative measures that cover the nature and quality of the FM/ trustee relationship. TPR guidance on appropriate measures may be appropriate. It may also be helpful for TPR to provide guidance on the potential benefits of retaining a third-party provider to provide oversight of a FM and the circumstances in which it would be appropriate to do so.

Investment product performance

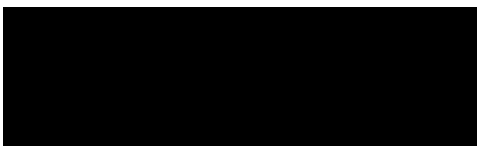
The Order references the presentation of 'fair and balanced' information on investment products. How will these new requirements dovetail with the existing FCA requirements regarding investment products sold to pension schemes? Notwithstanding, TPR guidance on what constitutes 'fair and balanced' information would be helpful.

'Policing' implementation and reporting breaches

Further information on policing of the various remedies (for example the provision of 'fair and balanced' product information), including time periods for reporting breaches would be helpful.

We trust that the comments made above are useful. We would of course be happy to discuss them further with you and your colleagues if appropriate.

Yours sincerely,

A large black rectangular box redacting the signature of Barry Mack.

Barry Mack

Director