

RIVER AND MERCANTILE
INVESTMENTS LIMITED

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

13 March 2019

Dear Praful,

Re: Investment Consultancy and Fiduciary Management market Investigation Order 2019

Further to article 8 of the Notice of intention to make an Order we make the following representations in respect of the Draft Order and Explanatory Note:

Draft Order

Clause 2.1 – definitions

“Competitive Tender Process” - We had previously suggested that the use of “reasonable endeavours” was subjective and the question of whether sufficient steps had been taken was open to challenge. We note the replacement of “reasonable endeavours” with “best endeavours” and consider that this standard too remains subjective, albeit that it clearly requires a far more significant effort on the part of trustees to secure offers to provide FM services. We had hoped that clarity could be provided without reference to either of these subjective standards, but if one is to be selected we think that “reasonable endeavours” is more appropriate given the significantly onerous requirements of the alternative; we do not consider it appropriate for trustees to incur significant expenditure, which may be required, in order for them to meet the best endeavours standard.

“Bid” – we note the inclusion of the defined term but do not believe its use has been carried through in the remainder of the text. We presume it was intended to be used in place of the undefined term “bid” in the definition of Competitive Tender Process.

“Fiduciary Management Service” – the inclusion of the words “and irrespective of whether the investment decisions require the consent of, or are subject to veto by, the Pension Scheme Trustees.” Runs contrary to what is at the heart of a fiduciary mandate i.e. that the manager has discretion. If investment decisions require consent, or the trustees have a veto, we do not consider this to be a fiduciary mandate at all.

Clauses 3 and 4

We presume that where there is a Fiduciary Management Agreement or agreements in place in respect of more than 20% of a scheme’s assets and where there has been a proper Competitive Tender Process pursuant to Article 4, any incremental increase in the percentage of assets subject to the mandate(s) e.g. an increase from 25% to 50% may be made without any further consideration of the tender requirements. If this is incorrect, it would be helpful to clarify.

Clause 8.1(a)

We think it should be clarified that all fees or costs that the Fiduciary Management Provider or any Interconnected Body Corporate receives should be separately and specifically itemised. As drafted, clause 8.1(a) can reasonably be read such that these amounts can be aggregated as part of sub-paragraphs (i) and (ii).

Clause 10.1

There is a risk that a performance standard determined by the majority of Fiduciary Management Providers may produce some less relevant information for more specialist mandates that are caught by the definition of Fiduciary Management Services. A standard agreed by a majority of Fiduciary Management Providers is likely to be struck from the perspective of “Full Fiduciary Management” (or proportional thereof) and assuming the use of the existing standard in the market as a starting point. Under the Order there will be some mandates deemed to be Fiduciary Management Services that are different to the basis for which the performance standard is being created. For example, some Liability Driven Investment portfolios will be defined as Fiduciary Management Services. Typically these portfolios are leveraged – that is to say the exposure to the market is greater than the value of the assets managed – which will produce some potentially unusual (and potentially not useful to Trustees) performance numbers if the standard referenced above is applied. Similarly, there may be other more bespoke mandates with a similar challenge. To rectify this by adjusting the standard could be challenging given these mandates are not typically managed by all IC-FM firms and so to get a majority agreement would be difficult. We appreciate that this issue has been left for the industry to solve, but it is worth noting that a solution that works well in all scenarios may be difficult to achieve.

Clause 15.1

Trustees have an obligation to confirm to the Fiduciary Management Provider that a Competitive Tender Process has been carried out. We think duplicating the obligation so that the same report is required to be given to the CMA is an unnecessary burden on trustees.

Explanatory note

Paragraph 20

Second line “advice” should read “advise”.

Paragraph 31

It would be helpful to set out an example of how this requirement would apply to sectionalised schemes or schemes that subsequently merge into a sectionalised scheme. While it may be possible to follow through the impact of mergers and growing sectionalised schemes by applying clauses 3 and 4, there are also situations where the answers are not so clear – assistance in this area would be appreciated to avoid a situation where consultation with specialist lawyers is required from the off to interpret the requirements of the Order.

Paragraph 52

Article 8.1 refers to “reporting period” – to confirm understanding - where for example the reporting period is quarterly the information will be updated and provided each quarter, but there is no requirement under the Order to produce an annual summary per se; but the reporting interval cannot be greater than annual. It would be helpful to confirm in the explanatory note if this is not the case.

RIVER AND MERCANTILE
INVESTMENTS LIMITED

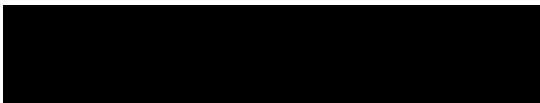
Paragraph 67

Part 5 imposes obligations on Fiduciary Management Providers – should the reference to TPR therefore reference assisting Fiduciary Service Providers rather than trustees?

Paragraph 65

The comment is noted but we have seen examples of where performance has been shown including illiquids but without exit costs and charges (i.e. performance shows a more risky strategy than that being proposed) – we think it is important to make clear that the costs and performance information shown should be relevant to the solution and/or strategy being proposed by the Fiduciary Management Provider.

Yours sincerely,



Sean Breslin

General Counsel and Head of Compliance,
River and Mercantile Group PLC