

To: [Investmentconsultants@cma.gov.uk](mailto:Investmentconsultants@cma.gov.uk)

For the attention of Praful Depala, Project Assistant Investment Consultants Market Investigation, Competition and Markets Authority ("**CMA**").

We welcome the opportunity to comment further on The Investment Consultancy and Fiduciary Management Market Investigation Order 2019 ("**Draft Order**") issued by the CMA on 11 February 2019.

We comprise a number of large UK Occupational Pension Schemes who have in-house investment advisers ("**OPS Firms**") as further detailed in the end section of this note, representing in aggregate AUM of approximately £185bn and approximately 1,340,000 members. This note sets out our written representations regarding the ambit of the Draft Order and specifically its potential application to OPS Firms<sup>1</sup>, as defined in the FCA Handbook (further details below). In this regard, we also refer to the representations already made by The Investment Association on 24 August 2018 on this subject (paragraphs 86 to 88 (inclusive)).

OPS Firms have their own FCA-regulated firm category, as a result of which they owe clear and well-established regulatory obligations and protections solely to their clients, being their respective pensions schemes, in terms of suitability, inducements and conflicts of interest. They must also provide complete transparency over costs and charges incurred by them and in turn charged solely to their clients.

OPS Firms, depending on their individual operating model, act as advisers and/or fiduciary managers, undertaking and/or arranging investment management, and providing advice or decisions on asset allocation. These activities would fall within the CMA's current glossary definitions for both "Investment Consulting Services" and "Fiduciary Management Services" used in the Draft Order. However, OPS Firms do not provide these services to any third parties – their FCA permissions only allow them to provide services to their respective Occupational Pension Scheme clients. The current exceptions noted in the definitions of "Investment Consulting Services" and "Fiduciary Management Services" in limbs (a), (b) and (e) respectively are only wide enough to cover a limited number of OPS Firms. Similarly, the exclusions set out in paragraph 1.6 of the Draft Order do not cover OPS Firms.

Our understanding, having spoken to various stakeholders, is that the CMA's original intention was to exclude OPS Firms as a category. Indeed, the exceptions in limb (e) referred to above will only exclude those OPS Firms which have been established as part of the corporate sponsor's group. However, we appreciate that the CMA may not be aware that some trustees and their OPS Firms are independent of the sponsor or, in the case of multi-employer or industry-wide schemes, that the Pension Scheme Trustee is not the Principal Employer or Controlling Employer. The end result is that we are being inadvertently caught by the Draft Order, as the exclusions, as currently drafted, do not cover those instances.

As not for profit entities that do not provide these services to any client other than the Pension Schemes of the groups by which they are owned, OPS Firms are not faced with the conflicts of interest identified by the CMA in its market investigation. There is no adverse effect on competition (AEC) in

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<sup>1</sup> A definition can be found in the FCA's glossary.

<https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=O>

respect of the Investment Consulting Services and Fiduciary Management Services being provided by the OPS Firms to their clients. As such, the benefits and protections offered to clients of non-OPS Firms from the proposals in the Draft Order cannot extend and have no applicability to OPS Firms.

The application of the remedies set out in the Draft Order to OPS Firms and the Trustees they advise would result in increased regulation, costs and associated time and resource commitments. This would result in OPS Firms, and the Pension Schemes for whose benefit they are entirely focussed, being financially and operationally disadvantaged. We cannot see how this could be in the best interests of the Pension Schemes or the members they represent.

We therefore call for all OPS Firms to be exempted from the CMA's remedies in order to avoid them being inadvertently bound by rules that are not designed or intended to cover them.

Since a definition of OPS Firms exists in the FCA's COBS rulebook, we are of the view that it would be appropriate and straightforward to carve out OPS Firms using that definition<sup>2</sup>. We would therefore request that the CMA include in paragraph 1.6 of the Draft Order, an explicit exemption for OPS Firms with reference to the FCA COBS rulebook definition of an OPS Firm, as set out below in mark up:

*1.6 This Order shall not apply to:*

*1) the Pension Scheme Trustees of Occupational Pension Schemes listed below in relation to any such scheme:*

*[...]*

*(2) OPS Firms (as defined in the FCA's Handbook Glossary).*

We would look forward to discussing the above with the CMA at the earliest opportunity.

Yours sincerely,

**Signed on behalf of:**

**USS Investment Management Limited and Universities Superannuation Scheme Limited  
BT Pension Scheme Management Limited and BT Pension Scheme Trustees Limited  
Coal Pension Trustees Investment Ltd and Coal Pension Trustees Services Ltd  
British Airways Pension Investment Management Limited  
Railway Pension Investments Limited**

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<sup>2</sup> Due to the unusual joint ownership structures of some trustee organisations with more than one Pension Scheme, it would be unhelpful for any exemption to be drafted by reference to ownership of a Provider by the Pension Scheme Trustees (because any one Pension Scheme Trustee may not have majority control of the OPS Firm).

## **End Note.**

### **Universities Superannuation Scheme Limited and its wholly owned OPS Firm, USS Investment Management Limited**

Universities Superannuation Scheme was established in 1975 as the principal pension scheme for universities and other higher education institutions in the UK. It has over 400,000 scheme members across nearly 400 institutions and is one of the largest pension schemes in the UK, with total fund assets of more than £60 billion. The scheme's trustee is Universities Superannuation Scheme Limited ("USSL"), a corporate trustee which provides scheme management and trusteeship. USSL delegates implementation of its investment strategy to a wholly-owned investment management subsidiary company - USS Investment Management Limited ("USSIM") - which is FCA registered and provides in-house investment management and advisory services. USSL is USSIM's sole client and USSIM does not act for any third parties.

### **BT Pension Scheme Trustees Limited and its wholly owned OPS Firm, BT Pension Scheme Management Limited**

The BT Pension Scheme ("Scheme") is one of the largest private-sector pension schemes in the UK. As of 30th June 2018, the fund was valued at £51.5 billion with a membership of nearly 300,000. The Scheme's trustee is BT Pension Scheme Trustees Limited ("BTPST"), a corporate trustee with nine trustee directors. The Trustee Board has ultimate fiduciary responsibility for the Scheme and its members.

BT Pension Scheme Management Limited is the FCA authorised executive arm of BTPST - 100% owned by the Scheme – and provides investment, advisory, member administration, operational and secretariat services solely for the Scheme.

### **Coal Pension Trustees Services Ltd and its wholly owned OPS Firm Coal Pension Trustees Investment Ltd**

Coal Pension Trustees Services Ltd ("CPT") was established in 1994 as the executive to support the two Trustee Boards of the former coal industry pension schemes, the Mineworkers Pension Scheme ("MPS") and the British Coal Staff Superannuation Scheme ("BCSSS"), together "the Schemes", that were closed following privatisation of the industry in 1994. The combined assets of the Schemes are currently over £20bn and total membership is over 200,000. The liabilities of the Schemes are guaranteed by the Government, specifically the Secretary of State for Business Energy and Industrial Strategy, who is the 'Principal Employer' but not an "Interconnected Body Corporate".

CPT is jointly owned and controlled by the Schemes. Coal Pension Trustees Investments ("CPTI") was established by the Schemes as an FCA regulated OPS firm in 2011 and is the primary investment adviser to the Schemes and is also responsible for implementation of their investment strategy. CPTI only acts on behalf of the Schemes and is not authorised to act for any other third parties.

### **British Airways Pension Trustees Ltd and its wholly owned OPS Firm British Airways Pension Investment Management Ltd**

The Airways Pension Scheme ("APS") and New Airways Pension Scheme ("NAPS") were established in 1948 and 1984 respectively for employees of various airline companies which are now within the British Airways plc group. As at 31 March 2018, the combined assets of the schemes were £24.6bn for an aggregate membership of over 100,000.

The governing documentation for APS and NAPS originally provided for the schemes to be managed by individual “management trustees” and for the assets to be held by a custodian trustee, British Airways Pension Trustees Limited (“**BAPTL**”). BAPTL is a company limited by guarantee, jointly owned and controlled by the management trustees. In 1988, BAPTL established British Airways Pension Investment Management Limited (“**BAPIML**”) as a wholly-owned subsidiary. BAPIML, an FCA-regulated OPS Firm, provides fund management and other investment services solely to APS and NAPS.

The management trustees of APS and NAPS were converted to corporate trustees in 2016. The corporate management trustees were incorporated as companies limited by guarantee in order that the trustee group, including BAPIML, remains wholly independent of the British Airways plc group.

### **Railways Pension Trustee Company Limited and its wholly OPS Firm Railway Pension Investments Limited**

The Railways Pension Scheme was created in 1994 after the privatisation of the railways industry. It is the largest of four rail associated pension schemes managed by the Railways Pension Trustee Company Limited with combined assets of £29 billion. The Railways Pension Scheme has nearly 340,000 members and provides pensions for more than 150 companies operating within the privatised rail industry. Railway Pension Investments Limited (“**RPMI Railpen**”) is a wholly-owned subsidiary of Railways Pension Trustee Company Limited (“**Trustee Company**”). RPMI Railpen’s sole client is the Trustee Company for which it manages scheme assets in line with the investment strategy and strategic decisions agreed by the Trustee Company. RPMI Railpen is authorised by the Financial Conduct Authority to carry out investment management activities on behalf of the Trustee Company and is registered as an OPS Firm.