

# **INVESTMENT CONSULTANTS MARKET INVESTIGATION**

## **Explanatory Note**

### **The Investment Consultancy and Fiduciary Management Market Investigation Order 2019**

*This note is not a part of the Order*

#### **Introduction**

1. The Competition and Markets Authority (CMA) published its findings in the Investment Consultants Market Investigation in a report under section 136 of the Enterprise Act 2002 (the Act) entitled Investment Consultants Market Investigation: Final Report on 12 December 2018 (the Final Report).
2. The Final Report set out the CMA's findings that there are features of the markets for Investment Consultancy Services and Fiduciary Management Services which individually and in any combination adversely affect competition in connection with the supply and acquisition of those services in the United Kingdom to and by pension schemes.
3. The CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the adverse effects on competition (AECs) that it found and the detrimental effect on customers that may be expected to result from the AECs. The AECs arise from the following features:
  - (a) in respect of Investment Consultancy Services:
    - (i) Low levels of engagement by some customers;
    - (ii) Lack of clear information for customers to assess the quality of their existing Investment Consultancy Provider;

- (iii) Lack of clear and comparable information for customers to assess the value for money of alternative Investment Consultancy Providers.
- (b) in respect of Fiduciary Management Services:
- (i) IC-FM firms steering their advisory customers towards their own Fiduciary Management Services;
  - (ii) Low levels of customer engagement at the point of first moving into Fiduciary Management;
  - (iii) Lack of clear and comparable information for customers to assess the value for money of alternative Fiduciary Management Providers;
  - (iv) Lack of clear information for customers to assess the value for money of their existing Fiduciary Management Provider;
  - (v) Barriers to switching Fiduciary Management Provider.
4. The Investment Consultancy and Fiduciary Management Market Investigation Order 2019 (the Order) gives effect to these remedies. Different articles in the Order will come into force on different dates. Unless otherwise stated, there is no further transitional period in relation to any of the provisions contained within the Order.

### **Possible consequences of not complying with the Order**

- 5. Section 167 of the Act places a duty on any person to whom the Order relates to comply with it. That duty is owed to any person who may be affected by a contravention of the Order. Any person who sustains loss or damage that is caused by a breach of this duty may bring an action before the court.
- 6. The CMA has the power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
- 7. Section 167 of the Act also provides that the CMA can enforce compliance with the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

## **Review of the Order**

8. The CMA has a duty under section 162 of the Act to keep under review the carrying out of the Order. This includes a duty to consider, from time to time, whether the Order needs to be varied or revoked by reason of any change of circumstances.

## **Status of this Explanatory Note**

9. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail. Terms defined in the Order have the same meaning in the Explanatory Note.

## **Structure of the Order**

10. The Order is divided into eleven parts:
  - (a) Part 1 contains general provisions, which include specifying when the Order comes into force and the scope of the Order.
  - (b) Part 2 contains definitions that are used throughout the Order and which are also used in this Explanatory Note.
  - (c) Part 3 prohibits Pension Scheme Trustees from receiving, and Fiduciary Management Providers from providing, Fiduciary Management Services in certain cases, unless the Pension Scheme Trustees have carried out a Competitive Tender Process.
  - (d) Part 4 prohibits the provision by IC-FM firms of advice and Marketing Material to Pension Scheme Trustee clients within the same document and sets out mandatory wording that must be used in all Marketing Material provided to Pension Scheme Trustee clients.
  - (e) Part 5 requires Fiduciary Management Providers to provide to existing Pension Scheme Trustee clients disaggregated fees in respect of Fiduciary Management Services and sets out minimum requirements to be met by Fiduciary Management Providers regarding disclosure of costs and charges when selling Fiduciary Management Services.
  - (f) Part 6 requires the use of a standardised methodology and template for providing information on past performance of Fiduciary Management

Services to potential Pension Scheme Trustee clients and provides that the CMA may appoint an independent person to oversee the implementation of the methodology and template.

- (g) Part 7 prohibits Pension Scheme Trustees from receiving Investment Consultancy Services unless the Pension Scheme Trustees have set Strategic Objectives for their Investment Consultancy Provider.
- (h) Part 8 requires Investment Consultancy Providers and Fiduciary Management Providers to adhere to basic requirements when providing information to potential Pension Scheme Trustee clients on the past performance of their recommended Asset Management or in-house funds or investment products (financial instruments).
- (i) Part 9 contains obligations on Pension Scheme Trustees, IC-FM firms, Fiduciary Management Providers and Investment Consultancy Providers to produce various Compliance Statements and submit them to the CMA.
- (j) Part 10 contains provisions empowering the CMA to give, and subsequently vary or revoke, directions as to compliance with the Order.
- (k) Part 11 contains a duty to supply information and documents to the CMA for the purposes of monitoring compliance with the Order and reviewing the effectiveness of its operation.

### **Part 1 – General**

11. Articles 1.2 and 1.3 provide that the Order shall come into force on different dates as follows:
  - (a) Part 1, Part 2, Part 6, Part 9, Part 10 and Part 11 shall come into force on the date on which the Order is made.
  - (b) Part 3, Part 4, Part 5, Part 7 and Part 8 shall come into force on the date six months after the date on which the Order is made.
12. Article 1.4 sets out the ‘sunsetting’ provisions applicable to the Order. The ‘equivalent provisions’ brought into force as part of the regulatory regime of a Relevant Sector Regulator do not have to be identical to the provisions contained in the Order, as it may be necessary to conform certain terms and expressions with those used within the relevant regulatory regime. It will be sufficient, for the

purposes of Article 1.4, that they have the same effect as the provisions of the Order.

13. On the date when equivalent provisions are brought into force as part of the regulatory regime of a Relevant Sector Regulator, the CMA will confirm (by posting a notice on its website) that the relevant provisions of the Order, including the associated provision requiring compliance reporting, will cease to have effect. The equivalent provisions need not all be brought into force on the same date.
14. Article 1.5 clarifies that any requirement imposed by the Order will not apply to the extent that it applies pursuant to any other statutory or regulatory requirements. For example, the remedy requiring IC-FM firms to identify clearly any marketing in the materials provided to existing advisory Pension Scheme Trustee clients in relation to Fiduciary Management Services would not apply to investment firms in respect of their MiFID II business because they are already subject to such a requirement under Article 24(3) of the MiFID II Directive. Moreover, nothing in the Order undermines the directly applicable provisions of the MiFID II Delegated Regulation.
15. Articles 1.6 and 1.7 set out the exclusions which apply to the Order as a whole.
16. In accordance with section 134 of the Act, the Order applies to the supply and acquisition of Investment Consultancy Services and Fiduciary Management Services in the United Kingdom to and by Pension Scheme Trustees.

## ***Part 2 – Interpretation***

17. Part 2 includes definitions of various terms used in the Order.
18. In the definition of Fiduciary Management Provider and Investment Consultancy Provider, the reference to a ‘person’ includes a body of persons corporate or unincorporate (section 11 of, and Schedule 1 to, the Interpretation Act 1978). Therefore, it includes a firm as well as an individual.
19. The definition of Fiduciary Management Services comprises two cumulative requirements, set out in part (a) and part (b), in recognition of the fact that some elements of the service may overlap with similar services provided by Asset Managers, whereas the Order is intended to apply to firms where they act as Fiduciary Management Providers. Accordingly, part (b) covers those elements of the service provided by Fiduciary Management Providers which may overlap with

similar services provided by Asset Managers and the additional requirement in part (a) ensures that firms which do not provide the elements of the service covered by that paragraph are not subject to the Order.

20. For the avoidance of doubt, the provision of the services set out in part (a) of the definition and the services set out in part (b) of the definition, at the same time as each other, constitutes the provision of Fiduciary Management Services. Part (a) may be provided prior to an agreement with a Fiduciary Management Provider and on a one-off or ongoing basis or once the agreement is in place and on a one-off or ongoing basis.
21. As regards part (a), the reference to 'advice' in respect of the specified matters is to advice on the merits of the Pension Scheme Trustees taking or not taking a specific course of action and it includes a recommendation or guidance to that effect. It does not extend to the mere provision of information about the specified matters.
22. The provision of advice by the Fiduciary Management Provider may be oral or written and the services may be provided under one or more contracts.
23. Investment Consultancy Services are defined to mean the provision of services where the Provider advises the Pension Scheme Trustees in relation to one or more of: investments that may be made or retained by or on behalf of the Pension Scheme Trustees; any matters in respect of which the Pension Scheme Trustees are required by law to seek advice in relation to the preparation or revision of the statement of investment principles; strategic asset allocation; manager selection. The services may also include (but do not have to include) advice in relation to investment strategy or the appointment of a Fiduciary Management Provider:
24. The statement of investment principles is a document required by statute. At the date of the Order, the requirement is contained in section 35 of the Pensions Act 1995.
25. In the context of a Competitive Tender Process, historical Bids made by firms that were independent of each other at the time of making the Bids, but have subsequently merged, are to be regarded as Bids from unrelated Fiduciary Management Providers.
26. In a Competitive Tender Process, Pension Scheme Trustees, or another person appointed by them to act on their behalf, can invite Bids from whichever firms

they choose but must use reasonable endeavours to obtain Bids from at least three unrelated Fiduciary Management Providers.

27. In the definition of Pension Scheme Trustees, the reference to the Occupational Pension Schemes having their main administration in the United Kingdom is drawn from section 1 of the Pension Schemes Act 1993.

***Part 3 – Mandatory tendering for Fiduciary Management – prohibition on trustees entering into or continuing an agreement with a Fiduciary Management Provider without carrying out a Competitive Tender Process and corresponding obligations on Fiduciary Management Providers***

28. The aim of this Part is that Pension Scheme Trustees achieve the best outcomes for scheme members by making an informed, active choice when selecting a Fiduciary Management Provider.
29. For the avoidance of doubt, any reference in Part 3 to a requirement for a Competitive Tender Process does not preclude Pension Scheme Trustees from carrying out more than one Competitive Tender Process. For example, they may decide to carry out separate Competitive Tender Processes relating to subsets of the scheme's assets.
30. When assessing whether the 20% threshold is met, the trustees should take into account only those assets of the scheme which are capable of being allocated to a Fiduciary Management Provider (whether such assets are subject to an agreement with a Fiduciary Management Provider or not). Therefore asset-backed contributions and buy-in policies should not be taken into account for this purpose.

*The Prohibition*

31. Article 3.1 provides that the application of Articles 3.2 to 3.5 is subject to Articles 3.6 and 3.7.
32. Article 3.2 applies to the situation where none of a pension scheme's assets are currently covered by an agreement with a Fiduciary Management Provider. It provides that, in this situation, Pension Scheme Trustees must not enter into one or more than one agreement with a Fiduciary Management Provider covering any of a pension scheme's assets which, individually or when aggregated with each other, would cover 20% or more of the scheme's assets unless two conditions

are satisfied. The first of these is that the Pension Scheme Trustees have carried out a Competitive Tender Process. The second is that the Pension Scheme Trustees have provided to each successful Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process. There is a corresponding prohibition against Fiduciary Management Providers accepting a new mandate for Fiduciary Management Services from Pension Scheme Trustees in these circumstances, unless a Competitive Tender Process has taken place and they have received the requisite written confirmation from the Pension Scheme Trustees.

33. Article 3.3 applies to the situation where less than 20% of a pension scheme's assets are covered by one or more agreements with one or more than one Fiduciary Management Provider and no agreement has been entered into as a result of a Competitive Tender Process. It provides that, in this situation, Pension Scheme Trustees and Fiduciary Management Providers must not (i) make or accept any increase in the level of Assets under Management under the existing agreement or agreements which would bring the total of a pension scheme's Assets under Management to 20% or more on the date of the increase, or (ii) enter into a new agreement which, individually or when aggregated with every existing agreement with one or more than one Fiduciary Management Provider, would cover 20% or more of a pension scheme's assets at the date of the new agreement unless two conditions are satisfied. The first of these is that the Pension Scheme Trustees have carried out a Competitive Tender Process in respect of all of the assets which would be covered by one or more agreements with a Fiduciary Management Provider. The second is that the Pension Scheme Trustees have provided to each successful Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.
34. The reference to 20% or more of a pension scheme's assets means either the allocation of 20% or more of the scheme's assets to Fiduciary Management Services in a single transaction or the allocation of a smaller percentage of the scheme's assets which results in the total of the scheme's assets under Fiduciary Management Services being 20% or more. The assets can be under the management of one or more than one Fiduciary Management Provider. The requirement to conduct a Competitive Tender Process is in respect of the allocation of assets to a fiduciary management mandate such that the 20% threshold is triggered. It is not triggered by market movements affecting the value of the assets already under management.



35. The reference in Articles 3.3 to 3.5 to 'accept any increase' means the acceptance of any mandate covering additional assets.
36. For the avoidance of doubt, under Article 3.3, the proposed allocation of any percentage of the pension scheme's assets which would result in the total of the pension scheme's Assets under Management being 20% or more, whether with one or more than one Fiduciary Management Provider, means that the Pension Scheme Trustees must carry out a Competitive Tender Process in respect of the total of the pension scheme's assets under Fiduciary Management Services. This is unlike the situation covered by Article 3.4, which requires a Competitive Tender Process in respect only of the increment to the pension scheme's Assets under Management - see paragraph 37 below.
37. Article 3.4 applies to the situation where less than 20% of a pension scheme's assets are covered by one or more agreements with one or more than one Fiduciary Management Provider which were entered into as a result of a Competitive Tender Process. It provides that, in this situation, Pension Scheme Trustees and Fiduciary Management Providers must not (i) make or accept any increase in the level of Assets under Management under the existing agreement or agreements which would bring the total of a pension scheme's Assets under Management to 20% or more on the date of the increase, or (ii) enter into a new agreement which, individually or when aggregated with every existing agreement with one or more than one Fiduciary Management Provider, would cover 20% or more of a pension scheme's assets at the date of the new agreement, unless two conditions are satisfied. The first of these is that the Pension Scheme Trustees have carried out a Competitive Tender Process in respect of all of the increment in the assets which would be covered by one or more agreements with a Fiduciary Management Provider. The second is that the Pension Scheme Trustees have provided to each successful Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.
38. For the avoidance of doubt, under Article 3.4, the proposed allocation of any percentage of the pension scheme's assets which would result in the total of the pension scheme's Assets under Management being 20% or more, whether with one or more than one Fiduciary Management Provider, means that the Pension Scheme Trustees must carry out a Competitive Tender Process in respect only of the increment to the pension scheme's Assets under Management. This is unlike the situation covered by Article 3.3, which requires a Competitive Tender

Process in respect of the total of the pension scheme's Assets under Management - see paragraph 33 above.

39. Article 3.5 applies to the hybrid situation where some assets have been the subject of a Competitive Tender Process and some have not. It applies to the situation where less than 20% of a pension scheme's assets are covered by one or more agreements with one or more than one Fiduciary Management Provider and one or more than one of those agreements was entered into as a result of a Competitive Tender Process, and one or more than one other of those agreements was not entered into as a result of a Competitive Tender Process. In this situation, Pension Scheme Trustees and Fiduciary Management Providers must not (i) make or accept any increase in the level of Assets under Management under the existing agreement or agreements which would bring the total of a pension scheme's Assets under Management to 20% or more on the date of the increase, or (ii) enter into a new agreement which, individually or when aggregated with every existing agreement with one or more than one Fiduciary Management Provider, would cover 20% or more of a pension scheme's assets at the date of the new agreement unless two conditions are satisfied. The first of these is that the Pension Scheme Trustees have carried out a Competitive Tender Process in respect of both (i) all of the assets currently covered by one or more agreements with a Fiduciary Management Provider that was not entered into as a result of a Competitive Tender Process and (ii) all of the increment in the assets which would be covered by one or more agreements with a Fiduciary Management Provider. The second is that the Pension Scheme Trustees have provided to each successful Fiduciary Management Provider written confirmation that they have selected the Fiduciary Management Provider as a result of a Competitive Tender Process.
40. The reference in Articles 3.4 and 3.5 to 'increment in the assets' means extending an existing mandate with a Fiduciary Management Provider or entering into a new contract with a new Fiduciary Management Provider.
41. Article 3.6 states that Articles 3.2 to 3.5 do not apply to the Pension Scheme Trustees of a pension scheme, in relation to which the Pension Scheme Trustees are contracting authorities for the purposes of the Public Contracts Regulations 2015 and appoint or have appointed a Fiduciary Management Provider in compliance with those Regulations.
42. Article 3.7 states that a Fiduciary Management Provider will not act in breach of Articles 3.2 to 3.5 if it enters into an agreement with Pension Scheme Trustees in

reliance on their written confirmation that it has been selected as a result of a Competitive Tender Process or that no Competitive Tender Process is required under Part 3. There is no requirement for the Fiduciary Management Provider to conduct due diligence or other verification process as regards the confirmation provided by the Pension Scheme Trustees.

*Requirement to hold a Competitive Tender Process where agreement(s) with a Fiduciary Management Provider covering 20% or more of a pension scheme's assets already exist*

43. Article 4.1 clarifies that the application of Article 4.2 is subject to Article 4.3 and the application of Articles 4.2 and 4.3 is subject to the exclusion set out in Article 4.4.
44. Article 4.2 covers the situation where Pension Scheme Trustees have entered into one or more agreements with one or more than one Fiduciary Management Provider before the date on which the Order is made without conducting a Competitive Tender Process and the value of the pension scheme's Assets under Management on the date on which the Order is made is in total 20% or more of the pension scheme's assets. In that situation, the Pension Scheme Trustees must not continue to obtain Fiduciary Management Services from the Fiduciary Management Provider(s) in question for more than five years from the commencement date of the first agreement with a Fiduciary Management Provider, that is the first appointment of a Fiduciary Management Provider, unless they have carried out a Competitive Tender Process as a result of which each Fiduciary Management Provider in question has been selected to provide Fiduciary Management Services.
45. Article 4.3 provides a two-year grace period to ensure that all Pension Scheme Trustees whose mandate already exceeds the five-year period or is approaching it have sufficient time to organise a Competitive Tender Process. Pension Scheme Trustees will need to have completed a Competitive Tender Process not later than two years beginning with the date on which the Order is made.
46. Article 4.4 states that Articles 4.2 and 4.3 do not apply to the Pension Scheme Trustees of a pension scheme, in relation to which the Pension Scheme Trustees are contracting authorities for the purposes of the Public Contracts Regulations 2015 and have appointed a Fiduciary Management Provider in compliance with those Regulations.

47. For the purposes of complying with Article 4, Pension Scheme Trustees should, as soon as possible once the Order is made, ascertain whether, on the date on which the Order was made, a total of 20% or more of the scheme's assets had been allocated to one or more than one Fiduciary Management Provider without conducting a Competitive Tender Process. If this is the case, they would need to comply with Article 4.
48. For the avoidance of doubt, where there already exists an agreement or agreements for the provision of Fiduciary Management Services in respect of 20% or more of a scheme's assets and there has been a Competitive Tender Process in respect of all of those assets, any further increase in the Assets under Management may be made without any further Competitive Tender Process.

#### *Competitive Tender Process – Articles 3 and 4*

49. A Competitive Tender Process is defined in Part 2 of the Order. It is for the Pension Scheme Trustees to decide whether an open or closed tender process best suits the needs of their scheme and to invite as many Fiduciary Management Providers to tender as they see fit, provided they invite and use reasonable endeavours to obtain Bids from at least three Fiduciary Management Providers who are independent of each other and thereby in a position to compete with each other.
50. The Competitive Tender Process may be conducted directly by the Pension Scheme Trustees or by another person appointed by them to act on their behalf, such as a third-party evaluator.
51. For the avoidance of doubt, following a Competitive Tender Process, Pension Scheme Trustees are not precluded from (a) splitting the Assets under Management between several Fiduciary Management Providers if they consider this to be in the best interests of the scheme, or (b) continuing with their existing Fiduciary Management Provider if it is the successful bidder (or one of several successful bidders) as a result of a Competitive Tender Process or if it did not participate in the Competitive Tender Process but nonetheless represents best value overall in the best interests of the scheme.

***Part 4 – Separation of advice and Marketing Material and use of mandatory wording in respect of Fiduciary Management Services***

52. The aim of this Part is that Pension Scheme Trustees better understand whether information on Fiduciary Management Services received from an Investment Consultancy Provider is advice or Marketing Material. To support the mandatory tendering requirements, this Part also requires IC-FM firms to include a reminder in Marketing Material to their Pension Scheme Trustee clients of the requirement to conduct a Competitive Tender Process in certain cases.

***Prohibition on supplying advice and Marketing Material in respect of Fiduciary Management Services within the same document***

53. Article 5.1 provides that IC-FM firms must not provide to their Pension Scheme Trustee clients within the same document both Marketing Material in respect of Fiduciary Management Services and advice in respect of Investment Consultancy Services or Fiduciary Management Services. This will give clarity and context to the different types of information these firms provide to Pension Scheme Trustees.
54. In this Article, ‘advice’ has the same meaning as in the definition of Investment Consultancy Services or Fiduciary Management Services. That is, it means advice on the merits of the Pension Scheme Trustees taking or not taking a specific course of action in respect of the matters falling within those definitions and it includes a recommendation or guidance to that effect. Conversely, Marketing Material means written material provided by an IC-FM firm to their existing Investment Consultancy Services clients which constitutes an invitation or inducement to purchase Fiduciary Management Services from the IC-FM firm. It includes general information which is promotional in nature.

***Mandatory wording***

55. Article 6.1 provides that the Marketing Material provided to Pension Scheme Trustee clients must be labelled as such and clearly identifiable as Marketing Material. It must also contain the wording specified in Article 7.1 and comply with Articles 7.2 and 7.3.

### *Content and format*

56. Article 7.1 sets out the prescribed text which must be used by IC-FM Firms for transparency, accountability and to avoid circumvention of this Part and Part 3. The guidance referred to is guidance that will be provided by TPR on running a tender process for the appointment of a Fiduciary Management Provider.
57. Article 7.2 provides that the prescribed text must be included by IC-FM firms on the first page of each Marketing Material document. The 'first page' means the front cover of the document in question. If the document is a website, the text must be included on the first webpage.
58. Article 7.3 provides that the text must be in at least the same font size as the predominant font size used throughout the remainder of the document. The text must not be disguised, diminished or obscured by graphics or in other ways (for example, if the document is a website, the text must be included in the first section of the first webpage that is first displayed to visitors). This is in order to ensure that the prescribed text has sufficient prominence.

### ***Part 5 – Fiduciary Management Services - fee information provision requirements***

#### *Requirement to provide disaggregated Fiduciary Management Services fees to existing Pension Scheme Trustee clients*

59. The aim of Article 8 is that Fiduciary Management Providers will provide information in a way that will allow Pension Scheme Trustees better to monitor both the overall costs and charges paid for the Fiduciary Management Services provided to them and the costs and charges paid for the key distinct underlying elements.
60. Article 8.1 provides that a Fiduciary Management Provider must provide in good time a regular and at least annual fee statement to each of its Pension Scheme Trustee clients that clearly sets out:
  - (a) A disaggregated itemisation of the overall costs and related charges incurred during the reporting period. The following costs and charges must be clearly itemised:
    - (i) Core fiduciary management fees. All costs and associated charges for the Fiduciary Management Service, covering advice and implementation. This must include any incidental costs, such as performance fees, paid

during the reporting period. The 'incidental costs' referred to in Article 8.1(a)(i) may be separated from the core fiduciary management costs and charges and itemised separately.

- (ii) All Asset Management fees in respect of the funds provided by the Fiduciary Management Provider (where the Fiduciary Management Provider is the fund manager) and those provided by third-party Asset Managers (where the Asset Manager is the fund manager). This must include any incidental costs and performance-related payments. This information must also be further itemised on a fund-by-fund basis, including to show the impact of such costs and charges on the return of underlying funds. The breakdown fund-by-fund is only in respect of the Asset Management fees: for example, if total Asset Management fees are £100,000 and there are only two funds, the breakdown would show fund A= £x,000 Asset Management fees and fund B=£y,000 Asset Management fees. This will ensure that Pension Scheme Trustee clients have access to fund-by-fund information on both a gross and net of costs and charges basis. This information can be provided in a separate annex;
  - (iii) In respect of (ii) above, all costs and charges associated with execution must be itemised separately from the Asset Management fees;
  - (iv) All other investment costs and charges. This must include custodian fees, administration charges and any charges that are related to Ancillary Services. These cost items may be bundled in one single item.
- (b) The aggregated costs and charges incurred during the reporting period. This must include all costs and charges incurred as part of the Fiduciary Management Service, including both those deducted directly from assets and those invoiced separately and those paid to the Fiduciary Management Provider and to third parties.

The total of (a) must equal the total of (b).

- 61. The information must be in a comprehensible form, such that Pension Scheme Trustee clients are reasonably able to understand it and to take investment decisions on an informed basis.
- 62. The use of 'in good time' is intended to ensure that a Pension Scheme Trustee client has sufficient time to read and understand the information provided before taking a key decision in respect of the Fiduciary Management Services (for

example, a decision whether to renew or make a material change to a mandate with its existing Fiduciary Management Provider). The use of 'on a regular basis and at least annually' is intended to ensure that where fee statements are provided more than once a year there is a sufficiently meaningful gap between the various fee statements (for example, every three or six months) and that there is no more than a full year between the fee statements.

63. The fee statement must be provided even if the Fiduciary Management Provider also makes costs and charges information available on an ongoing basis online.
64. Article 8.2 provides that the aggregated costs and charges and the itemised costs and charges, must be totalled and shown both as a cash amount and as a percentage of Assets under Management.
65. For consistency, the presentation of the above information would ideally follow the user templates prepared by the Cost Transparency Initiative (formerly the Institutional Disclosure Working Group). The aggregation of the charges should equal the overall Asset Management fees.
66. The Fiduciary Management Provider may choose to provide the disaggregated information on costs and charges required by this Part of the Order together with any existing periodic reporting to Pension Scheme Trustee clients that is required under the applicable financial services regime.
67. For the avoidance of doubt, Article 8 does not discharge Fiduciary Management Providers from their duty to comply with requirements under the applicable financial services regime to provide aggregated information to Pension Scheme Trustee clients. Those requirements will continue to apply (for so long as they are in force) in addition to the requirements in the Order to disaggregate information.

*Minimum requirements on Fiduciary Management Providers for fee disclosure to potential Pension Scheme Trustee clients*

68. The aim of Article 9 is to enable Pension Scheme Trustees better to understand the costs to be charged by Fiduciary Management Providers prior to deciding to award a contract for the supply of Fiduciary Management Services. This remedy requires the information on costs and charges provided by Fiduciary Management Providers to be consistent and comparable across bids in a tender process. The information provided will include granular breakdowns which are



intended to enable Pension Scheme Trustees accurately to assess the cost of competing offers.

69. Article 9.1 provides that, when participating in a Competitive Tender Process or any other tender process, Fiduciary Management Providers must disclose and itemise all costs and related charges that will be, or are likely to be, incurred by the Pension Scheme Trustee client as required by Article 9.2 and 9.3.
70. Article 9.2 provides that costs and charges must be totalled and expressed both as a cash amount and as a percentage of Assets under Management and clearly set out each of the following:
  - (a) The total ongoing costs and charges that will be, or are likely to be, incurred for the provision of the Fiduciary Management Service each year, including costs and charges related to it, those deducted directly from assets and those invoiced separately.
  - (b) An itemisation of the total costs and charges, including the following elements:
    - (i) The costs and charges for the Fiduciary Management Service, covering advice and implementation. Any incidental costs, such as performance fees, must be separated out from the core Fiduciary Management fee and itemised separately.
    - (ii) Asset Management fees, covering funds or fund-of-funds provided by the Fiduciary Management Provider, and those provided by third-party Asset Managers. These costs and charges must include any costs associated with execution, such as transaction costs, and incidental costs, such as performance-related payments.
    - (iii) All other investment costs and charges, such as custodian fees and administration charges and any charges that are related to Ancillary Services likely to be incurred.
  - (c) Any one-off costs and charges that will be, or are likely to be, incurred by the Pension Scheme Trustee client. These must include:
    - (i) Estimated transaction costs in moving assets into the proposed portfolio. These must include both the implicit and explicit costs of transferring assets, even if these costs are paid to third-parties, such as brokers.

- (ii) Any one-off charges for advice, such as for refining the investment portfolio.
  - (iii) Any other one-off charges, such as legal fees, or charges for 'onboarding' services.
- 71. The reference to 'legal fees' is to legal fees that will be, or are likely to be, incurred by the Fiduciary Management Provider and passed on to the Pension Scheme Trustee client.
- 72. Article 9.3 sets out the requirements for clear disclosure of any explicit exit costs and charges that would be incurred as a result of a change of Fiduciary Management Provider or ceasing to obtain Fiduciary Management Services, such as any exit charges or 'lock-in' costs and charges in the contract and a clear statement that transaction costs might be incurred in switching Fiduciary Management Provider or ceasing to obtain Fiduciary Management Services and that such costs may be similar in magnitude to those disclosed.
- 73. Article 9.3 also provides that the Fiduciary Management Provider must also disclose whether there are any features of the proposed portfolio that might increase such transaction costs. This could include, for example, the use of proprietary funds or an increased exposure to illiquid assets.
- 74. Best estimates should be provided in respect of any costs and charges that cannot be exactly specified.
- 75. TPR guidance is expected to assist Pension Scheme Trustees in setting out their requirements, including when drafting tender documents, so as to assist Fiduciary Management Providers to satisfy the requirements imposed under this Part of the Order. It will also cover the information that Pension Scheme Trustees should provide to their Fiduciary Management Provider in order to obtain meaningful estimates of costs and charges.

***Part 6 – Fiduciary Management Services - performance information provision requirements***

- 76. The aim of Part 6 is to provide greater transparency of, and comparability between, the performance information provided by alternative Fiduciary Management Providers, thereby enabling Pension Scheme Trustees to drive competition between Fiduciary Management Providers.

*Use of standardised methodology and template for providing to potential Pension Scheme Trustee clients information on the past performance of Fiduciary Management Services*

77. Article 10.1 provides that within six months beginning with the date on which Part 6 of the Order comes into force, Fiduciary Management Providers must put in place a Fiduciary Management Performance Standard, approved by the CMA, for providing information on their historic performance. Specifically, the remedy covers the historic investment performance of a firm's Full Fiduciary Management Clients.
78. Article 10.2 provides that a Fiduciary Management Performance Standard submitted to the CMA for approval must be from both (a) a majority of Fiduciary Management Providers or an association of investment professionals supported by a majority of Fiduciary Management Providers and (b) representatives of pension schemes. This is to ensure that the Fiduciary Management Performance Standard has the support of representatives of both the suppliers of Fiduciary Management Services and the Pension Scheme Trustees who purchase those services.
79. Article 10.3 sets out what must be included in the submission, namely:
- (a) A description of the Fiduciary Management Performance Standard and an explanation of how it: (i) is non-discriminatory; and (ii) would not otherwise create any competitive disadvantage between Fiduciary Management Providers;
  - (b) A list of Fiduciary Management Providers that have agreed to adopt the Fiduciary Management Performance Standard;
  - (c) A description of the process to ensure that the Fiduciary Management Performance Standard is updated when needed so that it remains current; and
  - (d) A description of the activities that Fiduciary Management Providers are undertaking, or are going to undertake, to help TPR provide Pension Scheme Trustees with guidance on using the Fiduciary Management Performance Standard.
80. The CMA expects that Fiduciary Management Providers will complete the development of the Fiduciary Management Performance Standard by working

with Pension Scheme Trustees or groups representing their interests and independent advisers including professional trustees and third-party evaluators.

81. Article 10.4 provides that from the date on which the Fiduciary Management Performance Standard is approved by the CMA pursuant to Article 10 or following the process set out in Article 11, its use by Fiduciary Management Providers becomes mandatory when providing information to potential Pension Scheme Trustee clients on the historic investment performance of the service provided to their Full Fiduciary Management Clients, including in all tender submissions and marketing communications. The mandatory use of the Fiduciary Management Performance Standard applies to all Fiduciary Management Providers, irrespective of whether they participated in its development.
82. Fiduciary Management Providers are expected to work with TPR to provide the information needed by TPR in order to develop materials and tools to support Pension Scheme Trustees using the Fiduciary Management Performance Standard.
83. For the avoidance of doubt, in the event that Fiduciary Management Providers fail to put in place a Fiduciary Management Performance Standard in accordance with Article 10, the consequential application of Article 11 (appointment of an independent person by the CMA) would not absolve Fiduciary Management Providers from the duty to comply with Article 10 or preclude any enforcement action that may be brought by the CMA or any person affected by the contravention (section 167 of the Act).

#### *Appointment of an independent person by the CMA*

84. Article 11.1 provides that the contingency steps set out in the remainder of Article 11 will apply in the event that a Fiduciary Management Performance Standard is not put in place in accordance with Article 10.
85. Article 11.2 provides that as soon as is reasonably practicable after the expiry of the period in Article 10.1, the CMA will put in place and set the terms and conditions of the appointment of an independent person to oversee the development and implementation of the standard, including the timetable for so doing. The timetable will be for a maximum period of six months beginning with the date of the appointment of the independent person. This appointment would be funded by Fiduciary Management Providers on a reasonable basis determined by the CMA in proportion to their Fiduciary Management Services

revenues in their last financial year. The cost of the appointment of the independent person will depend upon the progress made towards agreeing the Fiduciary Management Performance Standard during the six-month period referred to in Article 10.1 (that is, beginning with the date on which the Order comes into force).

86. Article 11.3 provides that the independent person must take such steps as he or she reasonably considers necessary to carry out his or her function effectively and must comply with any reasonable requests made by the CMA for the purpose of carrying out his or her function under the Order.
87. Article 11.4 provides that the Fiduciary Management Providers shall remunerate and reimburse the independent person for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the independence or the ability effectively and properly to carry out his or her function.
88. Article 11.5 sets out the reporting requirement that will be imposed upon the independent person, namely that he or she must promptly inform the CMA of any material developments arising from the operation of his or her function and provide to the CMA a written report every two weeks.

### ***Part 7 – Investment Consultancy Services - objective setting***

89. The aim of Part 7 is that Pension Scheme Trustees better monitor the performance of their Investment Consultancy Provider by setting and measuring them against an appropriate set of Strategic Objectives.

#### *The Prohibition*

90. Article 12.1 provides that Pension Scheme Trustees must not enter into a contract for the provision of Investment Consultancy Services or continue to obtain Investment Consultancy Services unless the Pension Scheme Trustees have set Strategic Objectives for the Investment Consultancy Provider.
91. The expectation is that the Strategic Objectives set under Article 12.1 will be closely linked to the scheme's investment objectives in most cases, that they will be reviewed at least every three years and after any significant change to the scheme's investment strategy and objectives and that Pension Scheme Trustees

will ask their Investment Consultancy Providers to report periodically on their performance in meeting the Strategic Objectives set under Article 12.1.

92. TPR guidance is expected to assist Pension Scheme Trustees in complying with the requirements imposed under this Part of the Order, including how Pension Scheme Trustees should set and monitor appropriate Strategic Objectives on which Investment Consultancy Providers can report in a meaningful way. The Strategic Objectives should include a clear definition of the outcome expected to be delivered and the timescale over which it would be delivered. They should also be appropriate for the appointment of the Investment Consultancy Provider in question and be reasonably achievable. The Strategic Objectives should also enable the Pension Scheme Trustees to measure the quality of the services provided.

***Part 8 – Minimum standard for how Investment Consultancy Providers and Fiduciary Management Providers provide information to potential Pension Scheme Trustee clients on the performance of recommended Asset Management or in-house funds or financial instruments***

93. The aim of Part 8 is to require Investment Consultancy Providers and Fiduciary Management Providers to adhere to common standards when they provide information on the performance of their recommendations, so that Pension Scheme Trustees will be better able to assess the value for money offered by alternative Investment Consultancy Providers and Fiduciary Management Providers and the quality of the advice provided.

*The minimum standard*

94. Article 13.1 provides that Investment Consultancy Providers and Fiduciary Management Providers must adhere to certain requirements when providing information to potential Pension Scheme Trustee clients on the past performance of their recommended Asset Management or in-house funds or financial instruments.
95. ‘Asset Management or in-house funds or financial instruments’ refers to anything into which Pension Scheme Trustees might invest the scheme’s assets using the services of the Investment Consultancy Provider or the Fiduciary Management Provider.

96. Articles 13.2 to 13.4 set out the requirements referred to in Article 13.1, which are as follows:

- (a) Where the information compares recommended Asset Management or in-house funds or financial instruments, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the following conditions are satisfied:
  - (i) the comparison is meaningful and presented in a fair and balanced way;
  - (ii) the sources of the information used for the comparison are specified;
  - (iii) the key facts and assumptions used to make the comparison are included.
  
- (b) Where the information contains an indication of past performance of a recommended Asset Management or in-house fund or financial instrument, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the following conditions are satisfied:
  - (i) that indication is not the most prominent feature of the communication;
  - (ii) the information must include appropriate performance information which covers the preceding five years, or the whole period for which the recommended Asset Management or in-house fund or financial instrument has been offered where the period is less than five years, or such longer period as the Investment Consultancy Provider or Fiduciary Management Provider may decide, and in every case that performance information is based on complete 12-month periods;
  - (iii) the reference period and the source of information is clearly stated;
  - (iv) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
  - (v) where the indication relies on figures denominated in a currency other than that of the State in which the Pension Scheme Trustee client or potential Pension Scheme Trustee client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

- (vi) where the indication is based on gross performance, the effects of commissions, costs or other charges are disclosed.
- (c) Where the information includes or refers to simulated past performance in respect of a recommended Asset Management or in-house fund or financial instrument, Investment Consultancy Providers and Fiduciary Management Providers shall ensure that the following conditions are satisfied:
- (i) the simulated past performance is based on the actual past performance of one or more financial instruments or financial indices which are the same as, or substantially the same as, or underlie, the recommended Asset Management or in-house fund or financial instrument concerned;
  - (ii) in respect of the actual past performance referred to in point (i), the conditions set out in points (i) to (iii), (v) and (vi) of paragraph (b) are satisfied;
  - (iii) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.
97. The requirements set out in Articles 13.2 to 13.4 are the equivalent of existing requirements under the financial services regime. In Article 13.3(e), 'Pension Scheme Trustee' has been substituted for 'retail client' for consistency with the rest of the Order.
98. For the avoidance of doubt, the requirements of this Part of the Order apply only where Investment Consultancy Providers or Fiduciary Management Providers choose to provide to potential Pension Scheme Trustee clients information on the past performance of their recommended Asset Management or in-house funds or financial instruments. They are not required by the Order to do so.
99. This Part applies to funds specifically recommended to Pension Scheme Trustee clients and to generic buy lists whenever Investment Consultancy Providers or Fiduciary Management Providers present potential Pension Scheme Trustee clients with quantitative evidence to demonstrate their capabilities.
100. Although this Part of the Order applies in respect of the provision of information (including in tender submissions and marketing information) provided to potential Pension Scheme Trustee clients, the CMA expects Investment Consultancy Providers and Fiduciary Management Providers also to comply with the



requirements of this Part when providing existing Pension Scheme Trustee clients with information that contains an indication of past performance.

## ***Part 9 – Monitoring and compliance***

### *Investigation Powers*

101. Article 14.1 provides that section 174 of the Act shall apply to the enforcement functions of the CMA under the Order.

### *Compliance reporting*

102. Article 15.1 provides that Pension Scheme Trustees, IC-FM firms, Investment Consultancy Providers and Fiduciary Management Providers who are subject (as applicable) to any of Parts 3, 4, 5, 6, 7 and 8 must submit Compliance Statements, in relation to each Part to which they are subject, to the CMA within 12 months and four weeks beginning with the date on which each Part to which they are subject comes into force and annually thereafter. A Compliance Statement shall confirm the extent to which the relevant applicable Articles of the relevant Part or Parts of the Order to which they are subject that were in force during the reporting period have been complied with during that period.

103. The requirement that the initial Compliance Statements must be submitted within 12 months and four weeks beginning with the date on which the relevant Part comes into force is in order to allow some time after the end of the reporting period to enable the Compliance Statement to be prepared and submitted. The four-week grace period will also apply to the submission of subsequent annual Compliance Statements. Any person required to submit Compliance Statements pursuant to more than one Part of the Order may combine those Compliance Statements into one document for submission to the CMA.

### *Additional compliance reporting requirements*

104. Article 16 provides that Pension Scheme Trustees, IC-FM firms, Investment Consultancy Providers and Fiduciary Management Providers must ensure that any Compliance Statement required by Part 9 of the Order is submitted together with a signed certificate stating that:

- (a) the relevant Compliance Statement has been prepared in accordance with the requirements of the Order; and

- (b) for the period to which the Compliance Statement relates, the Pension Scheme Trustees, IC-FM firm, Investment Consultancy Provider or Fiduciary Management Provider (as applicable) has or have complied in all material aspects with the requirements of the Order and reasonably expect to continue to do so.
105. Where the certificate is completed by an IC-FM firm, Investment Consultancy Provider or a Fiduciary Management Provider which is a body corporate, it must be signed by two of its directors, who may be:
- (a) the Chief Executive Officer;
  - (b) the Managing Director;
  - (c) any non-executive director; or
  - (d) any senior director with responsibility for a relevant business unit.
106. Where the certificate is completed by an IC-FM firm, Investment Consultancy Provider or a Fiduciary Management Provider which is an individual, it must be signed by that individual.
107. Where the certificate is completed by an IC-FM firm, Investment Consultancy Provider or a Fiduciary Management Provider which is a partnership, it must be signed by two of the partners.
108. Where the certificate is completed by Pension Scheme Trustees, it must be signed by:
- (a) a director of any sole corporate trustee; or
  - (b) the Chair of the Board of Trustees; or
  - (c) only if there is no Chair or the Chair is not available, any other member of the Board of Trustees.
109. This information is required to assist the CMA in complying with its statutory duty to monitor compliance with the Order.
110. Article 16.6 provides that if Pension Scheme Trustees, IC-FM firms, Investment Consultancy Providers or Fiduciary Management Providers are aware of any failure on their own part to comply with any part of the 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.

***Part 10 – Directions by the CMA as to compliance***

111. Article 17 provides that the CMA may give directions as to compliance with the Order and it may vary or revoke any directions so given.

***Part 11 – Duty to supply information to the CMA***

112. Article 18.1 provides that any person to whom the Order applies shall have a duty, as may be required by the CMA, to provide any information and documents for the purposes of enabling the CMA to monitor the carrying out of the Order, or to review the effectiveness of the operation of the Order.
113. Article 18.2 provides that any person to whom the Order applies shall have a duty, as may be required by the CMA, to keep and produce those records specified in writing by the CMA that relate to the operation of any provision of the Order.
114. Article 18.3 provides that any person to whom the Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provision of the Order shall have a duty, as may be required by the CMA, to attend and provide such information in person.
115. Article 18.4 provides that subject to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of the Order or any provision of the Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with the Order.