

## MiFID II LGPS administering authority election for professional status

### Opt up process notes

1. These notes have been compiled to assist authorities in completing the standard documentation needed for election to professional investor status. They are not a complete and comprehensive guide to the process and **do not supersede, amend or negate the provisions of the Markets in Financial Instrument Directive 2014/65 (“MiFID II”) or the Financial Conduct Authority Handbook.**
2. These notes relate ONLY to an election for the purposes of administering the Local Government Pension Scheme and NOT for the separate treasury management process.
3. The decision to opt up the authority to professional status lies solely with the investment firm to whom the application is made and accordingly that firm may, at its discretion, request alternative and/or further information in support of the application. Firms which are not regulated by the FCA, for example, firms based in the rest of the EU and operating under passport arrangements, may have their own opt-up process/questions. Please check with them before submitting.
4. Applications to opt up must be sent to ALL investment firms with which the authority wishes to become an elected professional investor. ‘Firms’ for this purpose include all financial institutions with which the authority has a client relationship in relation to the investment of pension fund monies, for example, asset managers, fund providers and consultants.
5. A full list of enclosures/links required for submission with the application can be found in Schedule 1 to these notes. Please ensure these are ready for inclusion before making an application (but see notes 9 and 18 regarding authority to complete the application). A guide to the types of investments within the scope of MiFID II can be found in Schedule 2.

### Timing

6. LGPS administering authorities should commence their opt-up process as soon as possible and certainly by the end of September 2017 at the latest to ensure the process is complete in good time. Applications received by firms after September 2017 will be processed as quickly as possible but completion prior to the end of December 2017 cannot be guaranteed. If the authority has not completed the process before 3<sup>rd</sup> January 2018 with any firm, that firm must take ‘appropriate action’ which could include a termination of the relationship.

### Decision to opt up

7. The reclassification of local and public authorities as default retail clients from 3<sup>rd</sup> January 2018 will significantly restrict the range of institutions and instruments available to authorities. Many institutions currently servicing the LGPS are not authorised to deal with retail clients and may not wish to undergo the required changes to resources and permissions in order to do so.
8. Even if the firm secures the ability to deal with retail clients, the range of instruments it can make available to the client will be limited to those defined under Financial

Conduct Authority (FCA) rules as 'non-complex', which would exclude many of the asset classes currently included in LGPS fund portfolios. Authorities are therefore strongly advised to opt up to professional status in order to continue to be able to access the full range of instruments and institutions required to implement an effective investment strategy.

### **The opt-up letter**

9. The letter will need to be completed on behalf of the authority. Therefore whoever signs the letter must have the necessary authority to do so, either in the form of an existing delegation or a committee minute. Given the constraints on timing, authorities may wish to submit applications in advance of the availability of a committee minute in order for the assessment process to begin.
10. The letter refers to 'local authority' for the avoidance of doubt and, for this purpose, this includes those LGPS administering authorities which are not in whole or part local authorities as defined by the Local Government Act 1972.
11. The standard letter assumes an opt-up is being requested in relation to all services and funds offered by the firm. Should an authority wish to opt up in relation to a single service, the authority should amend and/or delete (a) and (b) after the first paragraph accordingly. An authority may want to do this where the firm offers a wide range of complex instruments which the authority does not currently use and there is no intention to use the firm again once the current relationship has come to an end, for example, if the next purchase will be via the LGPS pool.
12. The letter and accompanying information template must be sent to ALL firms currently used by the authority.
13. Authorities must ensure that they have read and understand the provisions contained in (a) to (f) at the end of the letter and in particular schedule 1 containing the protections which will be forgone by moving to elected professional status.

### **The information template**

14. The template refers to 'local authority' for the avoidance of doubt and, for this purpose, this includes those LGPS administering authorities which are not in whole or part local authorities as defined by the Local Government Act 1972.
15. The template should be completed as completely and as accurately as possible. Knowingly providing false information within the template could result in the immediate removal of the authority's status as a professional client and the resultant consequences which could include significant financial risk.

### **The information template quantitative test**

16. For the quantitative test, please answer yes to question (a) a portfolio size may be quoted as at the end of the last financial year or any other recent date which is easily obtainable. Please answer yes to question (b). No further questions are required to be answered in this section.

### **The information template qualitative test Section 1**

17. The qualitative test is designed to enable the firm to make a collective assessment of the expertise, experience and knowledge of the authority in relation to its investment decisions. Investment decision for this purpose includes any decision made in relation to the administration of pension fund investments as an actual or prospective client of a firm which either does or wishes to provide financial services to the authority. The 'collective' for this purpose includes committee members, officers, advisors and/or consultants.
18. For question 1, most authorities will be answering yes to (a) or (b), in which case the officer completing the template will require the necessary authority, either in the form of an existing delegation or a committee minute. Given the constraints on timing, authorities may wish to submit applications in advance of the availability of a committee minute in order for the assessment process to begin.
19. If the answer to 1 is (c), that is, committee members are not part of the decision making process and all such decisions are delegated to officers, then Section 2 of the template will not require completion.
20. If neither (a), (b) or (c) apply to the authority's decision-making process, please use question 3 to describe the process. The remainder of the template will need to be completed accordingly and additional information in support describing the structure may be necessary.
21. Please ensure that the scheme of delegations confirming your answer is enclosed or a link provided. Enclosures should be attached with the template with references back to the question to which they relate. Links may either be added to the template in the relevant question box or attached as a schedule with references back to the relevant question.

### **The information template qualitative test Section 2**

22. Please complete section 2 if committee members play any part in the decision-making in relation to the administration of pension fund investments as an actual or prospective client of a firm which either does or wishes to provide financial services to the authority.
23. For this purpose, committee members are those who attend committee as formal members with voting rights.
24. For **question 2**, training can include events as either separate to or as part of committee meetings. Examples of training can include notes and/or slide presentations. A couple of examples should be sufficient. However, the firm may ask for further examples if they feel it is appropriate.
25. Total hours should include any period of time dedicated to the improvement of the knowledge of committee members in any aspect of the administration of pension fund investments in either formal or informal session but not including conferences which should be included under question 5.
26. In most cases, the hours offered and delivered will be the same. However if a session was cancelled due to lack of availability of members or because the rest of

the committee agenda ran over time, those hours should be deducted from the hours delivered figure.

27. For **question 3** in respect of training delivered as part of committee meetings, training attendance recording can include the recording of attendance at committee. If the answer is no please do not complete question 4.
28. The average for **question 4** should be calculated as the total number of hours of attendance at training for all members of the committee divided by the number of committee members. If the answer to question 3 was no do not complete this question.
29. The hours for **question 5** should include only the periods of formal agenda items or an estimate of seven hours per full day (3.5 per half day) of conference if not available.
30. The self-assessment in **question 6** can either be externally sourced or internally developed. The tool referred to can be manual (either written or via meetings with the Chair or other delegated person) or electronic in nature
31. The years in **question 7** can include service with the committee, either present or past, and service with committees/boards of other LGPS funds or similar public or private pension schemes with investment decisions made in a trustee or quasi trustee capacity. The average is calculated by dividing the total years of service for all committee members by the total number of committee members.
32. Authorities are not required to complete **question 8** but can add anything which may be helpful to the firm in completing its assessment. However, authorities should bear in mind that any significant reliance on the information provided (for example if the chair of committee worked for an asset manager for 20 years) could result in a review of the status of the authority should that information change.

### **The information template qualitative test Section 3**

33. Please complete **question 1** as fully as possible as it will enable the firm to assess the experience of the authority in investing in a particular asset class or vehicle. Not having experience either presently or in the past will not prevent an opt-up but will however require a greater degree of reliance on other areas such as training and advice.
34. All authorities should be able to answer yes to **question 3** with the individual or firm providing that advice named in questions 4 or 5 of Section 5.

### **The information template qualitative test Section 4**

35. The risk policy or framework in **question 1** may be externally sourced or internally developed. It may be investment specific or a wider framework which includes investment. The purpose is to be able to demonstrate that the authority approaches the assessment of risk in a structured and regularly reviewed manner.

36. The advisor for the purpose of **question 2** can include a risk specialist or the advisor named at questions 4 or 5 of section 5. If the party used to advise on or carry out the review was different, please name them separately.
37. Details of the review under **question 3** can include the minute of an agenda item of a committee, notes of a special meeting or the written outcome of a specific process. However, in each case the methodology of the review should be referenced.
38. For **question 4**, training can include events either separate to or as part of committee meetings. Examples of training can include notes and/or slide presentations. A couple of examples should be sufficient. However, the firm may ask for further examples if they feel it is appropriate.
39. The self-assessment in **question 5** can either be externally sourced or internally developed. The tool referred to can be manual (either written or via meetings with the Chair or other delegated person) or electronic in nature and may be the same as that referred to in question 6 of Section 2.

#### **The information template qualitative test Section 5**

40. Please complete **question 1** if the answer given to Section 1 question 1 was (a) or (b), or if appropriate, (d). Please list all officers who have a significant role in supporting the work of the committee either in an expert or secretariat capacity. Relevant qualifications can include CIPFA. The experience quoted can include previous roles which included similar duties which provided knowledge of the services in relation to which this application is being made.
41. Please complete **question 2** if the answer given to Section 1 question 1 was (b) or (c), or if appropriate, (d). Please list all officers who have specific delegated powers to make investment decisions on behalf of the authority. Please include details of the limitations of those powers which should match the scheme of delegations enclosed under Section 1 question 2. The experience quoted can include previous roles which included similar duties which provided knowledge of the services in relation to which this application is being made.
42. The succession plan referred to in **question 3** may be a formal plan or a regular review carried out as an agenda item of the committee.
43. For the purposes of **questions 4 and 5** investment advisor means the individual or firm appointed to provide the 'proper advice' as required by regulation 7 of the Local Government Pension Scheme Investment Regulations 2016 (England and Wales) or regulation 11 of The Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010.
44. Individuals named in **question 4** should have been appointed in an individual capacity (not as a representative of a firm named in question 5). Experience may include other similar roles which provided knowledge of the services in relation to which this application is being made.
45. Firms named in **question 5** should have been appointed in that capacity even though an employee of that firm may have been allocated to the authority.

46. For the purposes of **questions 6 and 7** investment consultant means any other individual or firm in attendance at committee meetings appointed to support investment decisions who are NOT named in questions 4 or 5
47. Individuals named in **question 6** should have been appointed in an individual capacity (not as a representative of a firm named in question 7). Experience may include other similar roles which provided knowledge of the services in relation to which this application is being made.
48. Firms named in **question 7** should have been appointed in that capacity even though an employee of that firm may have been allocated to the authority
49. Please ensure that those individuals or firms named in questions 4 to 7 are formally notified of the intention to include them in this application in order to be able to answer yes to **question 8**.

#### **The information template qualitative test Section 5**

50. A censure referred to in **question 1** can originate from DCLG officers, the Local Government minister or any other body with authority granted under legislation or by the Secretary of State. Such censure must refer specifically to the regulation/s of which the authority is in breach.
51. Authorities are not required to complete **question 2** but can add anything which may be helpful to the firm in completing its assessment. However authorities should bear in mind that any significant reliance on the information provided could result in a review of the status of the authority should that information change

**These notes are not a complete and comprehensive guide to the process of electing for professional client status and do not supersede, amend or negate the provisions of the Markets in Financial Instrument Directive 2014/65 (“MiFID II”) or the Financial Conduct Authority Handbook**

## **MiFID II LGPS administering authority election for professional status**

### **Opt up process notes**

#### **Schedule 1 List of required enclosures or links**

Section 1 question 1 delegation or minute giving authority to officer completing the application

Section 1 question 2 scheme of delegations for pension fund investment decisions

Section 2 question 1 example briefing for new committee members

Section 2 question 2 example training notes or presentation

Section 2 question 6 example self-assessment process and/or online tool

Section 3 question 2 Investment Strategy Statement

Section 4 question 1 Risk Framework/Policy

Section 4 question 3 Last review of Risk Framework/Policy

Section 4 question 4 example training notes or presentation

Section 4 question 5 example self-assessment process and/or online tool

Section 5 question 3 Succession plan

Section 6 question 1 Details of breach (if applicable)

## **MiFID II LGPS administering authority election for professional status**

### **Opt up process notes**

#### **Schedule 2 guide to investments in and out of scope for MiFID II**

The list below is a guide to investments that fall within and outside of the scope of MiFID, it is not an exhaustive list and is intended to be used only as an indication of the status of the types of investments shown. **The list does not supersede, amend or negate the provisions of the Markets in Financial Instrument Directive 2014/65 (“MiFID II”) or the Financial Conduct Authority Handbook**

#### **Within Scope:**

- Shares
- Bonds, debentures, loan stock, certificates of deposits and t-bills
- Warrants
- Certificates representing certain securities
- Units in Collective Investment Schemes and Money Market Funds
- Options and futures
- SWAPS and spread bets
- Rights under stakeholder pension schemes and personal pension schemes
- Insurance Policies
- Funeral Plan contracts
- Rights to or interest in any of the above

#### **Out of scope:**

- Bank and building society deposits
- Loans to companies and other organisations
- Spot or forward exchange contracts
- Commodities including gold and silver bullion
- Directly owned property
- ‘Collectables’ such as works of art, racehorses and fine wines