The Chartered Institute of Public Finance & Accountancy

Response to FCA third MiFID II consultation paper

January 2017

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. Our 14,000 members work throughout the public services, in national audit agencies, in major accountancy firms, and in other bodies where public money needs to be effectively and efficiently managed.

As the world's only professional accountancy body to specialise in public services, CIPFA's portfolio of qualifications are the foundation for a career in public finance. They include the benchmark professional qualification for public sector accountants as well as a postgraduate diploma for people already working in leadership positions. They are taught by our in-house CIPFA Education and Training Centre as well as other places of learning around the world.

We also champion high performance in public services, translating our experience and insight into clear advice and practical services. They include information and guidance, courses and conferences, property and asset management solutions, consultancy and interim people for a range of public sector clients.

Globally, CIPFA shows the way in public finance by standing up for sound public financial management and good governance. We work with donors, partner governments, accountancy bodies and the public sector around the world to advance public finance and support better public services.

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January 2017

Markets Policy and International Division

CIPFA welcomes the opportunity to comment on the third consultation paper and, as stated in previous responses, looks forward to working with the FCA as its response to MiFID II develops, particularly as an existing standard setter in relation to exploring the potential for self-regulation within the local authority sector.

The current consultation paper has provided two key questions for consideration:

Q16 - Do you agree with our approach to revise the quantitative thresholds as part of the opt-up criteria for local authorities by introducing a mandatory portfolio size requirement of £15m? If not, what do you believe is the appropriate minimum portfolio size requirement, and why?

CIPFA believes that portfolio size itself is not a good measure of the ability of a Local Authority to act as a professional client although a de-minimus figure is helpful in achieving the FCA's stated aims to ensure that "only smaller, less sophisticated local authorities (such as parish and town councils acting in their treasury function capacity) are likely to fall below the required threshold". Evidence provided by other sources suggest that £15million may be too high and many Local Authorities, potentially including some of the larger authorities, will fail this test despite potentially being able to pass the other tests. In addition, it is not clear how or over what time period the portfolio size will be measured as this can vary significantly during the year due to a Local Authorities' cash flow profile. Where a portfolio rises above and falls below £15million this could lead to confusion and potentially sub-optimal investment decisions where investment positions may have to be traded quickly as the client status has changed despite all other assessments remaining unchanged.

Whilst application of the opt-up test will be down to individual financial institutions it may be helpful to provide greater clarification around the tests so that more consistent assessments should be expected between institutions thus reducing confusion and administration within Local Authorities. It is clear that for many Local Authorities being classified as a retail client will restrict investment opportunities which will inevitably lead to further pressure on revenue budgets.

CIPFA has developed the Treasury Risk Management Toolkit which provides guidance to enable Local Authorities to establish a number of risk metrics which can be monitored and reported on a regular basis to enable a Local Authority to quantify its risk exposure and assess this against agreed risk tolerances. By using this approach Local Authorities are able to demonstrate sound financial and risk management which would be expected of a professional investor. We are aware that the Scottish Finance Directors have proposed a principles based approach which fit well with this methodology. All Local Authorities should have the opportunity to request professional status if they feel they can demonstrate a clear understanding of the implications and risks involved in the investment products they intend to use.

The requirements for the qualitative test appear to be reasonable but further clarification is needed to establish what additional training and qualifications may be necessary for existing individuals involved in pensions and treasury management activities. CIPFA is keen to support practitioners in this area and would welcome the opportunity to discuss this issue with the FCA to identify what actions are required and what can be reasonably developed in the existing timeframes working with Local Authorities and Financial Institutions. CIPFA, as the professional body for people in public finance, is uniquely positioned to work with a range of partners to create and maintain training and qualifications for Local Authorities which could assist with criteria expectations set out in the consultation.

One specific area of concern is the requirement “the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged” could mean that the majority of existing practitioners are not in a position to apply for professional status. Further clarification of the intention of this test along with the term ‘financial sector’ would be helpful to determine which individuals are likely to pass (or fail) this test.

Q17- Do you agree with our approach to extend these proposals to non-MiFID scope business? If not, please give reasons why.

Yes, we agree that a streamlined approach to all regulated activities is appropriate. Small local authorities should benefit from the same protections in the event that they undertake non-MiFID business.

I hope this is a helpful contribution to the FCA work in this area. If you have any questions about this response, please contact Neil Sellstrom
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Yours sincerely

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