



# Committee Training: MiFID II

Warwickshire Pension Fund

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# What is MiFID?

- Markets in Financial Instruments Directive
  - Legislation for regulation of investment services within the European Economic Area
  - MiFID I came into force in November 2007
- Due to increasing complexity of financial products, and issues from the 2008 financial crisis, a review of the Directive was instigated
  - Result - MiFID II - which is due to come into force from January 2018 (previously targeting January 2017).

# What are the main changes in MiFID II?

- Changes in market structure, including:
  - New systems and controls
- Transparency of reporting
  - Greater equity market transparency and new transparency requirements for fixed income and derivatives
- Scope and supervision
  - Structured deposits will be within scope
  - New powers to ban products/services
- Attempt to improve access to EU markets from non-EU countries
- Client categorisation

# Client categorisation – MiFID II

- Managers will continue to be required to classify clients (including pension funds) as ‘retail’ or ‘professional’
- Retail/professional status is currently determined using established criteria
- Under MiFID II, the FCA will gain an additional layer of discretion to increase the requirements, which they are proposing to do:
  - “To protect smaller, less sophisticated Local Authorities whilst allowing the more sophisticated Local Authorities to ‘opt-up’” (to professional status)”
- A local authority may elect to professional status
  - They will need to demonstrate to each manager that certain **qualitative** and **quantitative** criteria can be met

# How might this impact the Fund?

- Local authorities will be subject to a re-assessment of 'retail' or 'professional' status
- The potential impact of change from professional to retail status could be:
  - A much reduced pool of providers
  - Restricted range of investments with (potentially) higher cost
- A local authority may elect to 'opt up' to professional status
  - But...they will need to demonstrate to each manager that the qualitative and quantitative criteria can be met

# Quantitative and qualitative assessments

- Quantitative (two of the following must be satisfied):
  - *The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters*
  - *The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds £15m*
  - *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*
- Qualitative:
  - *“adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved”*
  - *The assessment should be performed in relation to “the person authorised to carry out transactions on its behalf”*

# Key questions include

- Who is tested against the criteria – “the client”?
  - Individuals? Collective?
  - Pensions Committee?
  - Administering Authority?
- Does the classification apply per Fund or per asset class?
- What happens to assets on “day 1” if designated as Retail?
- Where does this leave the Government’s infrastructure ‘initiative’?

# Timescales and progress

- FCA consultation – closed in January 2017
  - BCPP response
  - Hymans Robertson response
- Becoming clear that LGPS Funds will be classified as retail investors at outset.
- Key question is whether the FCA will make it simple for LGPS Funds to ‘opt up’ to professional status.
- Further policy statement due from FCA - June 2017.
  - Should provide more clarity on the treatment of the LGPS and local authority bodies.



# Potential actions

- What can the Fund do?
  - Discuss implications with providers
  - Prepare for assessment against the qualitative and quantitative criteria including:
    - What evidence to put forward to support professional status?
    - Consider who will be judged against the qualitative criteria?
    - Prepare to amend delegations accordingly?

Thank you

