

West Yorkshire Pension Fund

Response to the Committee of European Securities Regulators Consultation Paper CESR/10 – 831

1. Background

- 1.1 The West Yorkshire Pension Fund is one of the largest local authority pension funds in the United Kingdom, with over 220,000 members, 205 employers and assets of some £8 billion as at 31 March 2010. The Local Government Pension Scheme (LGPS) is the largest public sector scheme, with over £100 billion in financial assets and close to 4,000,000 members nationally. It is controlled by regulations issued by the Department for Local Government and Communities (CLG), but managed and administered locally by elected councillors.
- 1.2 The response below is numbered in line with the questions in the consultation paper.

2. Response to the Questions in the Consultation Paper

- 2.1 The opening sentence of Annex II.I (1) is clearly the over-riding definition, the points (a) to (i) providing sub-classification for convenience.
- 2.2 Without clear evidence that there has been a failure of regulation under MiFID which would be directly addressed by narrowing the range of entities covered by points (c), (h) and (i) this would seem a pointless exercise. It is also hard to see how (i) could be limited, as that was obviously included to ensure all entities covered by the first sentence were included in at least one of the points.
- 2.3 As stated above, without evidence to prove the Directive has failed, and none has been provided, there would appear to be no case for narrowing the range of entities covered by points (c), (h) and (i).
- 2.4 As the Directive appears to be achieving its objectives there is no need to clarify the language.
- 2.5 This would be wholly inappropriate, as in the United Kingdom there are 79 local authorities who manage pension funds, who will employ professionally qualified staff, and under the regulations made by the United Kingdom government are required, inter alia, to identify and manage the risk in their investment portfolios. Furthermore all United Kingdom local authorities have, and are required, to manage their own public debt.

- 2.6 Without specific evidence that the current arrangements have failed, especially after such a turbulent time in financial markets, there can be no reason to add to the administrative burden of investment firms.
- 2.7 The current arrangements appear to be working satisfactorily, see 2.6 above.
- 2.8 See 2.7
- 2.9 No case for change has, in fact, been made.
- 2.10 The one area where there does appear to be a case for some change is in the standards that apply when an investment firm undertakes transactions with an ECP. Those instances where financial institutions have failed their clients, excluding fraud which cannot be stopped by regulation, relate to the level of disclosure in terms of risk, the true nature of investments sold, and the existence of any conflict of interest, including contracts with other clients.
- 2.11 The proposals in paragraph 40 of the Consultation Paper that investment firms have to:
- act honestly, fairly and professionally, and
 - communicate with ECP's in a way that is fair, clear and not misleading
- appears to go a long way towards addressing the systemic problems that have been identified, and would therefore be supported. The second point could, perhaps, be extended to require full disclosure of all information to enable a client to make a professional judgement.

3.0 **Conclusion**

- 3.1 There is little evidence that increasing the regulatory burden on investment firms in order for them to understand their clients' knowledge, experience or expertise better would improve matters in any way. It is also likely that clients would not welcome investment firms assessing them in this way, when there is nothing to indicate firms would be capable of making such judgements, as once again there would be a clear conflict of interest - there would be no advantage to a firm in turning clients away.
- 3.2 Clients who meet the condition set out in Annex II.I (2) are in a position to buy in the necessary experience knowledge and expertise by taking independent advice. To eliminate any remaining concern there may be relating to entities covered by Annex II.I (1) an amendment could make Annex II.I (2) an over-riding condition.
- 3.3 There is no need to change arrangements for local authorities, as:
- some are required to engage in these activities in order to discharge the duties placed on them by national law (in particular the administering authorities of the Local

Government Pension Scheme (LGPS) in the United Kingdom)

- local and regional government across the EU varies considerably in its nature and scope, so an EU Directive on this single issue would not be appropriate, and indeed does not address the issue, which is the basic premise of caveat emptor.

3.4 West Yorkshire Pension Fund (WYPF) supports the proposals contained in paragraph 40 of the Consultation Document, which will allow the client to make an informed decision.

3.5 WYPF would be prepared to provide more information, particularly in relation to the investment capabilities of LGPS administering authorities, or discuss any of the points covered in this response.

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