

WILTSHIRE COUNCIL

WILTSHIRE LOCAL PENSION BOARD

13 February 2020

PENSION FUND – MIFID II COMPLIANCE

Purpose of the Report

1. The purpose of this report is to update the Board on the approach taken by the Wiltshire Pension Fund in ensuring that it is compliant with the FCA's MiFID II regulations in relation to its "Professional Investor" status.

Background

2. The Markets in Financial Instruments Directive (2004/39/EC) (MiFID) was originally introduced in November 2007 with the aim of becoming the cornerstone of the EU's regulation of financial markets, seeking to improve their competitiveness by creating a single market for investment services and activities and ensuring a high degree of harmonised protection for investors in financial instruments. MiFID II which came into effect on 3 January 2018 sought to build on this vision by enabling greater transparency of the markets & further protections for investors, through product governance, independent investment advice & better reporting requirements to clients.
3. Note: The legislative reference in connection with MiFID II is Directive 2014/65/EU of the European Parliament, including the markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU.
4. The Scheme Advisory Board (SAB) along with other stakeholders successfully lobbied for the opt up test to "Professional Investor" status proposed in the 2016 FCA consultation on MiFID II to be applied to administering authorities to better reflect their constitutions and decision-making processes. This lobbying enabled Wiltshire Council to opt up & maximise the advantages gained by the new regulations during its implementation period between the 3 July 2017 and 3 January 2018.
5. The key benefit for Wiltshire Council as the Scheme Manager of the Fund in adopting its "Professional Investor" status is that enables the Fund to take advantage of the full range of investment options in the financial markets. However, to maintain its "Professional Investor" status good governance arrangements needed to be set in place to ensure members selected to oversee the Fund's investment matters continue to discharge their duties & responsibilities in accordance with the regulations.
6. In light of this requirement good governance arrangements have been introduced by officers to avoid the Fund being reclassified as a "Retail Client" from a "Professional Investor" by developing a framework of actions which should be completed at least annually.

Considerations for the Board

7. The administrative actions to maintain the Fund's "Professional Investor" status include;
 - A member training strategy, reviewed annually, which gives active consideration to the requirements of MiFID II;

- Annual self-certification by members of the Investment sub-Committee that they have undertaken the necessary training to ensure that they remain competent to carry out the duties and responsibilities associated with sitting on that Committee;
 - Implementation of officer procedures to ensure;
 - a) Both members & relevant officers are competent
 - b) Confirmation from the Fund's professional advisers that they remain qualified to provide advice to the Fund
 - c) That a record of "Professional Investor" status is held by all third parties, including their confirmations to accept our status. Third parties being Investment Managers, Advisers & the Fund's custodian
 - d) That appropriate triggers are in place to identify any impact on the Fund's "Professional Investor" status & that an annual overall self-assessment of the Fund status is undertaken, similar in nature to that of the Code of Practice 14 review
 - e) Notification of material changes to the Fund's "Professional Investor" status is communicated to third parties on a timely basis
 - f) That officers will monitor FCA guidance in order to take into account any updates relating to MiFID II
 - That an internal annual audit of compliance with MiFID II will be undertaken of the Fund
 - Reviewing & ensuring that all relevant contracts have given consideration to the requirements of MiFID II
 - That a policy in connection with the Fund's compliance will be included within the Investment Strategy Statement
 - That the Council's constitution is consistent with the requirements of MiFID II
8. Organisations can be fined up to 5 million euros, or 10% of their global turnover. The FCA have demonstrated their intent to ensure MiFID II compliance & will fine organisations where malpractice has occurred. Although the Fund is a client & not an investment manager, the FCA's stance should be considered by the Fund in terms of the consequences of any reputational damage that may be caused where an investment manager may not have been compliant. It should consider what steps it would take in the event of such a situation. It is recommended therefore that the Fund needs to ensure that its Managers are acting in a transparent manner and completing their transaction reporting obligations daily.

Conclusions

9. Whilst much is stated about the requirement to comply with MiFID II & the need for the Fund to maintain its "Professional Investor" status, there is much less prescription about how this should be achieved. For example, MiFID II standards cover market structure, product governance and research unbundling, but even the FCA appear to struggle with the practical implementation of such compliance in these areas & to date focus primarily on trade & transaction reporting which are much easier to quantify.
10. Maintenance of the Fund's "Professional Investor" status can be subjective in nature, for example the quantification of triggers by which the Fund's status may be affected, the definition of "timely" when communicating material changes to status and the administrative arrangements of the Fund's investment managers who should be ensuring that the Fund remains competent to hold such a status.
11. Consequently, officers have taken a best practice approach in constructing these arrangements & will seek to enhance these practices as improved guidance becomes available.

Environmental Impact

12. There is no environmental impact from this report.

Financial Considerations

13. There are no immediate financial considerations.

Risk Assessment

14. There are no risks identified at this time.

Legal Implications

15. There are no immediate legal implications arising from this report.

Safeguarding Considerations/Public Health Implications/Equalities Impact

16. There are no implications at this time.

Proposals

17. The Board is asked to endorse the arrangements set out within this report concerning the Fund's compliance with MiFID II & the maintenance of its "Professional Investor" status.

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