



# FCA makes maiden market investigation reference

The UK's investment consultancy sector faces a lengthy and detailed investigation as the FCA has passed on the baton to the Competition and Markets Authority (the CMA) with its decision to make a market investigation reference (MIR) – it is the first time that the FCA has made such a reference.

## Introduction

The FCA has recently announced its decision (14/09/2017) to make a MIR to the CMA in relation to the supply, and acquisition of, investment consultancy and fiduciary management services to and by institutional investors and employers in the UK.

The FCA has highlighted the significance of the assets affected by investment consultants' advice, with up to £1.6tn of assets affected by the twelve largest firms' advice. Although investment consultancy services are used mainly by pension trustees, there are other institutional investors who use these services, including charities, insurance companies and endowment funds. In its press release ([click here](#)), the FCA reiterated that:

“Investment consultancy services play a significant role advising pension fund trustees when they are procuring asset management services. It is important that trustees can be confident they are getting good quality advice and value for money from their investment consultants.”

The CMA now has until 13 March 2019 to conduct its independent and more in-depth investigation and duly report on its findings. If ultimately the CMA does conclude that there is an adverse effect on competition, it

will need to identify any market features which prevent, restrict or distort competition and any remedies which it considers appropriate to resolve these competition concerns. The CMA has wide powers in relation to remedies and can impose structural as well as behavioural ones. It can also make recommendations to others, including Government, about changes to the legal framework or regulatory environment, for example. The CMA is under a duty to implement the remedies within six months of its Report.

## Background

The FCA had originally launched its asset management market study back in November 2015. When it published its Interim Report in November 2016, its provisional decision was to make a MIR and consultations followed. In light of the provisional findings and in order to address the FCA's concerns, some investment consultants put forward a package of undertakings in lieu of a market reference (UILs). In June 2017, the FCA published its Final Report confirming its competition concerns and also consulted on its provisional view to reject the UILs offered. As the FCA explained in its actual MIR decision:

“Although we welcomed the UIL package proposed by the three largest investment consultants we cannot be confident that it would ‘achieve as comprehensive a solution as is reasonable and practicable’ to the potential

adverse effects on competition identified. A full investigation of the sector by the CMA would enable the identification of all the relevant issues and that they are fully understood and (if the CMA were to find any adverse effect on competition) appropriate remedies put in place.”

In reaching its MIR decision, the FCA noted that certain elements of investment consultancy services are not regulated by it. Subject to the MIR, the FCA is recommending that the Treasury extend its regulatory remit so as to include asset allocation advice. As the UIL package was only put forward by some of the market players, the FCA was concerned that this left “the competition issues for a large segment of the market potentially unaddressed”. It was also uncertain as to whether structural remedies might be necessary to resolve conflicts of interest concerns arising from vertically integrated businesses.

### The main concerns identified

As set out above, the CMA’s market investigation is a fresh and more in-depth review of the industry. The CMA may ultimately endorse none, some or all of the issues identified by the FCA and, indeed, may identify further concerns.

The FCA had identified the following features as raising competition concerns:

- a weak demand side:
  - pension scheme trustees often have limited experience and resources so are more reliant on investment consultants
  - it is difficult for trustees to assess the quality of investment consultants’ advice and of fiduciary managers’ services
  - rates of switching investment consultants are low
- high levels of concentration within the market with relatively stable market shares among investment consultants
- barriers to expansion (rather than barriers to entry): the FCA noted that trustees often selected investment consultants “based on well-known names and reputations” and that investment consultants appeared to compete more on relationships and brand rather than on the quality of the advice. It

was, therefore, difficult for newer, smaller entrants to develop their business beyond niche, specialist areas

- vertically integrated business models operating in the market, where firms offer both advisory and fiduciary management services: this was identified as giving rise to conflicts of interest. The FCA was concerned about investment consultants’ own products being recommended in preference to others’ potentially more appropriate options.

### What happens next?

On announcing the launch of the market investigation, the CMA said that it will be running a bespoke market survey as part of its large market information-gathering exercise and that it will be undertaking significant economic analysis. In order to start the information-gathering process, the CMA immediately sent out Information Requests to “the main companies involved”.

The CMA has just published for consultation its Issues Statement, setting out its proposed scope of the investigation and the areas where it would welcome evidence and information from interested parties. The CMA is proposing to focus on three main areas:

- whether investment consultants have little incentive to compete for customers due to difficulties faced by these customers in assessing, comparing and switching investment consultants
- whether conflicts of interest reduce the quality and/or value for money of the advice and services provided
- whether barriers to entry and expansion result in less competitive pressure being faced by established investment consultants.

The next eighteen months will be an even busier time for the industry and the FCA acknowledges that “there will be costs to industry arising from a CMA review”. This MIR also comes shortly after the CMA has put in place measures to streamline the market investigation process and to help ensure that it does not need to extend the statutory timetable.

If you have any queries regarding this development, please do get in touch with your usual RPC contact or one of the contacts below.

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