

MiFID 2 - client categorisation

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MiFID 1

- Client categorisation rules used to calibrate investor protections – retail, professional and eligible counterparty
- ‘Local authorities’ not mentioned in MiFID 1
- FCA rules note that Local authorities can be ‘*per se professional*’ clients if they meet the Large Undertaking Test (*most do*)



MiFID 2

- All local authorities '**retail**' by default
- Standard criteria given for retail clients who wish to 'opt-up' to professional client status
- Member states given discretion to set alternative or additional quantitative test only



Our consultation proposal

- Allow firms to classify pension administration and treasury management of a local authority separately
- MiFID and non-MiFID investments (e.g., private equity)
- Normal procedural requirements (e.g., requirement to state in writing that you wish to opt-up) and normal qualitative test:

*the firm undertakes an 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*



Our consultation proposal (2)

Quantitative criteria:

- a) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, **exceeds £15m**;

AND EITHER ONE OF:

- b) 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; OR
- c) 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;



Feedback

130+ consultation responses, plus engagement with banks, asset managers, local authorities and central government

Concerns about:

- Application to LGPS arrangements, inc. Pooling
- Whether size criteria calibrated correctly
- Which individuals must be assessed
- Transitional arrangements
- Increased burden of process

And requests for classification on how the rules should be applied in practice



Final rules

Quantitative criteria:

- a) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds **£10m**;

AND **ANY** ONE OF:

- b) 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; OR
- c) the **individual authorised to act on behalf of 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;
- d) the **local authority is acting as the administrator of a pension fund as part of the LGPS, and is subject to the LGPS Regulation**



Transitional arrangements and next steps

- Investment firms must implement MiFID 2 by 3 January 2018
- Investment firms can begin opting up clients from 3 July 2017, to take effect on 3 January 2018



Key Messages

- The FCA will look for investment firms to :
 - Have appropriate written internal **policies and procedures** to categorise its clients
 - **Keep records** for each client in relation to their categorisation, including the **information gathered** to support any categorisation
- If firms are to **begin** or **continue providing investment services** to local public authorities on or after 3 January 2018, they will need to consider implementing the MiFID 2 changes and processing requests before this date.
- If firms do not feel able to opt-up local authorities to professional client status, they must take '**appropriate action**' in relation to ongoing services. What is appropriate will be **fact dependent** and should be considered in light of the ***client's best interests rule***.



Thank you for listening