MIFID guidance note for Chief Finance Officers

The **publication** on 3 July of the Financial Conduct Authority's (FCA) policy statement, set out final rules for their implementation of the Markets in Financial Instruments Directive II (MiFID II). This recognised the unique nature of decision making within authorities in the conducting of Treasury and Pension Fund investment management activities.

Local authorities need to decide whether they want to opt up for professional investor status. Time is tight as the whole process must be completed by 3 January 2018 and has to be done separately with each Financial Institution involved. This note has been drawn up to aid local authorities in that process. It is for information only and local authorities will need to satisfy themselves of their own legal requirements. This note, and the guides in the links in the next paragraph have been written in consultation with experts within the industry but they are a guide only and do not supersede, amend or negate the provisions of the Markets in Financial Instrument Directive 2014/65 ("MiFID II") or the Financial Conduct Authority Handbook or any other legal requirements

Not all local authorities will want to apply to opt up to professional investor status. Some will be content to retain retail status. Professional investors are able to deal in more complex financial instruments, but retail clients have more protections. See here for a guide to the loss of protections and here for a guide to the investments that fall within and outside the scope of MiFID.

Councils that act as administering authorities for Pension Funds will have to make a separate decision and go through a separate process for their Pension Fund and for the Council's Treasury Management activities.

As part of the process councils will be asked a number of questions about the scale of investments and investing history. Issues such as the appropriate knowledge, skills and training of those involved in making investment decisions will also be considered as part of the opt up process.

As mentioned above, a local authority will have to opt up separately with each financial institution. The financial institution will decide what process they think is right to assess potential clients for opt up. This means that local authorities may have to go through different processes and documentation with different financial institutions.

However there are some standard processes being offered; whether these are used will depend on whether the financial institution concerned is using them.

(i) For Pensions Funds the LGPS Scheme Advisory Board, working with the LGA, the Investment Association and other industry bodies has developed a straightforward and consistent opt up process and standard documentation for LGPS pension funds to follow. This can be viewed here.

(ii) For Treasury Management, we are aware that Cipfa working with Public Sector Link have set up a platform for standardised data requirements and transmission of data to multiple financial institutions. The platform is free for local authorities**.** More information on the platform is also available on **http://pslink.co.uk/**. The data to be collected and outputs for counterparties are also now available on their site. The local authority and the financial institution concerned will both have to be signed up to the system to use it for the opt up process between them. If you have any questions on this platform, please contact support@pslink.co.uk or neil.sellstrom@cipfa.org.

If the Cipfa process is not being used for Treasury Management by the financial institution concerned, the opt up process will need to be initiated in another way by the local authority. In order to help with that a standard letter has been produced which the local authority could send to the financial institution to initiate the process.

Legal Entity Identifier

All bodies ("legal entities" such as local authorities) who are clients of financial institutions in respect of certain "reportable transactions" (eg orders to execute transactions in financial instruments) under MiFID II may need to have a "Legal Entity Identifier" (LEI). This is to enable reporting to the FCA by investment firms. EU investment firms will also require clients to have LEIs to make transaction reports to their local regulators. LEI s may be obtained from an "LEI Issuing Organisation" (such as the London Stock Exchange). Further information on LEIs what LEIs are, what they are used for and how to obtain one can be found on the FCA website.

This information is provided as guidance only and is not exhaustive. It does not supersede, amend or negate the provisions of the Markets in Financial Instrument Directive 2014/65 ("MiFID II") or the Financial Conduct Authority Handbook You should seek your own professional advice to assist you in making your decision.