

## Consultation Paper

# CESR Technical Advice to the European Commission in the context of the MiFID review – Client Categorisation

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CIPFA is one of the leading professional accountancy bodies in the UK and the only one which specialises in the public services. It is responsible for the education and training of professional accountants and for their regulation through the setting and monitoring of professional standards. Uniquely among the professional accountancy bodies in the UK, CIPFA has responsibility for setting accounting standards for a significant part of the economy, namely local government. CIPFA's members work (often at the most senior level) in public service bodies, in the national audit agencies and major accountancy firms. They are respected throughout for their high technical and ethical standards, and professional integrity. CIPFA also provides a range of high quality advisory, information, and training and consultancy services to public service organisations. As such, CIPFA is the leading independent commentator on managing and accounting for public money.

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- 1 CIPFA welcomes the opportunity to comment on the consultation and more specifically to Questions 5, 6 & 7.

#### **Question 5**

- 2 Within the UK there is a comprehensive regulatory regime for local authority treasury management including government legislation and statutory Codes. This framework was endorsed by the Audit Commissions report Risk and Return<sup>1</sup> and by the Communities and Local Government Select Committee review of Local Authority investments<sup>2</sup>.
- 3 Following these reviews, there have been a number of initiatives from within CIPFA aimed at further strengthening the framework and enhancing skills within UK Local Authority treasury management. These include revision of the CIPFA Treasury Management Code of Practice<sup>3</sup> (the CIPFA Code), publication of CIPFA Treasury Management Panel Bulletins, development of a skills matrix for those responsible for Treasury Management and the introduction of the public sector treasury management joint qualification with the Association of Corporate Treasurers. In addition the government has reviewed its investment guidance and Scottish regulations have also been introduced.
- 4 This framework reinforces the basis of CIPFA's view that local authorities in the UK should be treated as professional clients given their level of knowledge, expertise and ability to assess risk.
- 5 Local authorities across Europe (and indeed within the UK) vary significantly in their size and treasury management dealings. This may make it very difficult to have a one size fits all categorisation for local authorities across Europe. Even within the UK a large metropolitan council is likely to have differing treasury management requirements to that of a small District Council. An approach that also takes into account the size of a local authority when deciding on categorisation could therefore have benefits and may be useful in the UK, for example, in relation to Parish Councils.
- 6 Within the current Conduct of Business Sourcebook (COBS) the Financial Services Authority (FSA) considers that UK local authorities meet the test for large undertakings. They specifically comment on the interpretation of "*a national or regional government, a public body that manages public debt....*". The following is their statement in the current COBS in relation to local authorities:

#### **COBS 3.5.2A**

<sup>1</sup>In relation to *MiFID or equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of <sup>2</sup> [COBS 3.5.2 R \(4\)](#). <sup>2</sup>In the *FSA's* opinion, a local authority may be a *per se*

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<sup>1</sup> <http://www.audit-commission.gov.uk/nationalstudies/localgov/pages/riskandreturn.aspx>

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcomloc/164/164i.pdf>

<sup>3</sup> Treasury Management in the Public Services, Code of Practice and Cross-Sectoral Guidance Notes, Fully Revised Second Edition 2009

*professional client* for those purposes if it meets the test for large undertakings in <sup>2</sup>COBS 3.5.2 R (2)<sup>2</sup>.

The Large Undertakings test is defined as:

**COBS 3.5.2 R (2):**

(2) in relation to *MiFID or equivalent third country business* a large undertaking meeting two of the following size requirements on a company basis:

- (a) balance sheet total of EUR 20,000,000;
- (b) net turnover of EUR 40,000,000;
- (c) own funds of EUR 2,000,000;

- 7 Should there be a proposal that local authorities become retail clients (which CIPFA would not support), there would need to be a detailed consideration of the potential implications.

These are likely to include the following:

- Potential reduction in the number of counterparties willing to deal Local Authorities due to increased level of protection required
- Additional costs of regulatory paperwork for counterparties and advisors which would be likely to be passed onto the local authority, which may not be matched by a material additional benefit to the client.
- Potential additional burdens and risk of delays for local authorities themselves
- Local authorities may feel a false sense of protection and not feel the requirement to fully understand the products and instruments they are investing in. This may also mean that they may place a greater reliance on advisors, which goes against the fundamental principle of the Code that they are not able to delegate or outsource responsibility for treasury management.

**Questions 6 & 7**

- 8 Questions 6 & 7 consider the requirement that the knowledge and experience of entities be assessed by investment firms or a test be applied prior to being considered per se professionals.
- 9 The CIPFA Code has a section (Treasury Management Practices 10) which covers training and qualifications. It states: "All public service organisations should be aware of the growing complexity of treasury management in general, and its application to the public services in particular. Modern treasury management demands appropriate skills, including a knowledge of money and capital market operations, an awareness of available sources of funds and investment opportunities, an ability to assess and control risk, and an appreciation of the implications of legal and regulatory requirements. Every public service organisation should secure the necessary training, having assessed the professional competence of both those involved in the treasury management function and those with a policy, management or supervisory role. Arrangements to ensure the availability of suitable skills and resources should recognise the prospect that staff absences may, at times, demand that others step in who do not normally have involvement on a day-to-day basis with the treasury management function."

10 Given these requirements already in place within the CIPFA Code, CIPFA does not believe that this is necessary for additional assessments or tests prior to local authorities being considered professionals.

### **Conclusion**

11 In conclusion, CIPFA believes that due to the current regulatory regime within the UK, local authorities (with the possible exception of parish councils due to their size) should be classified as “professional” clients and that there should not be any additional assessment or testing of this knowledge by investment firms.

12 Should CIPFA become aware of any further information which may be of use within the consultation they will ensure that this is forwarded to the CESR.